

# 2019 Public Records Act HANDBOOK

Summary of the Major Provisions and Requirements  
of the Public Records Act and Related Topics

- 
- › Electronic Records
  - › Text of the Public Records Act
  - › Updated including changes effective January 1, 2019



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## Introduction

This Handbook, designed for City officials and staff, provides a summary of the major provisions of California's Public Records Act and related topics. Part One of the Handbook summarizes the basic provisions of the Public Records Act, including documents that are exempt from disclosure and the proper procedure for complying with the Act. Part Two highlights the unique issues raised by electronic records. Part Three contains the complete text of the Public Records Act. We hope you find this Handbook useful. Should you have any questions about the information included in this Handbook, please do not hesitate to contact our office.

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Richards, Watson & Gershon

## **PART ONE.**

# **COMPLIANCE WITH THE PUBLIC RECORDS ACT**



# COMPLIANCE WITH THE PUBLIC RECORDS ACT:

## KEY QUESTIONS AND ANSWERS

*The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.*

CAL. CONST. ART. I, § 3(B).

*In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.*

GOV'T CODE § 6250.

California's Public Records Act is a key part of the philosophy that government at all levels in this State must be open and accessible to all.<sup>1</sup> Under the Public Records Act, a local government agency must disclose virtually any public document; only a statutory exemption or a need for confidentiality that clearly outweighs the public's right to access will legally justify withholding a public document. The purpose of this Handbook is to provide a general overview of the Public Records Act and recent amendments to it, along with a general road map for compliance. This Handbook addresses the questions most frequently asked of us by our local government clients.

### I. WHAT IS THE PUBLIC RECORDS ACT?

The Public Records Act is a California statute that affords the public the right to inspect, and obtain a copy of, most of the information retained by State and local agencies in the course of business. The Public Records Act regulates the public's access to records and sets out the specific statutory circumstances under which particular records need not be disclosed. The Public Records Act states that public records are open to inspection at all times during the office hours of a local agency.<sup>2</sup>

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<sup>1</sup> *Rogers v. Superior Ct. (City of Burbank)*, 19 Cal. App. 4th 469 (2 Dist. 1993).

<sup>2</sup> Gov't Code § 6253(a).

The California Constitution also guarantees that public records are open to public scrutiny.<sup>3</sup> It provides that a law, such as the Public Records Act, should be “broadly construed” if it furthers the people’s right of access to public records, and “narrowly construed” if it limits the right of access.

## **II. WHAT RIGHTS DOES THE PUBLIC RECORDS ACT AFFORD TO THE PUBLIC?**

Under the Public Records Act, every person has the right to inspect and to obtain a copy of any identifiable public record.<sup>4</sup> It is irrelevant whether the person making the Public Records Act request already has possession of the public records requested.<sup>5</sup> The term “person” includes individuals, and various types of business entities.<sup>6</sup> A “person” need not be a citizen of California or of the United States to make use of the Public Records Act.<sup>7</sup> A local agency must supply an exact copy of the record on request, unless it is “impracticable” to make an exact copy.<sup>8</sup> The word “impracticable” in the Public Records Act does not necessarily refer to situations where a copying request would be “inconvenient” or time consuming to the agency. Rather, the term “impracticable” modifies the requirement that the agency provide an “exact” copy. If a requested document is subject to the Public Records Act, the agency must provide the best or most complete copy of that document reasonably possible.<sup>9</sup> Any reasonably segregable portion must be made available after deletion of any portion exempt from disclosure.<sup>10</sup>

The requirements of the Public Records Act are the minimum standards which must be met by local agencies. The Public Records Act specifically provides that agencies may adopt procedures to allow greater access to records, except where the law otherwise prohibits access.<sup>11</sup>

The person who is the subject of a particular record does not have a specific right under the Public Records Act to prevent disclosure of any particular

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<sup>3</sup> CAL. CONST. art. I, § 3(b).

<sup>4</sup> Gov’t Code § 6253(a), (b).

<sup>5</sup> The motive of the requester seeking public records is immaterial; an individual already in possession of requested documents may seek the documents so he or she may publicly disseminate them without fear of liability for doing so. *Caldecott v. Superior Court*, 243 Cal. App. 4th 212, 219 (4 Dist. 2015).

<sup>6</sup> Both cities and City attorneys have been deemed “persons” under the Act. *Los Angeles Unified School Dist. v. Superior Court (City of Long Beach)*, 151 Cal. App. 4th 759 (2 Dist. 2007) (holding that City, as well as the City attorney, were entitled to obtain records of school district relating to school construction project).

<sup>7</sup> Gov’t Code § 6252(c); *Connell v. Superior Court (Intersource, Inc.)*, 56 Cal. App. 4th 601 (3 Dist. 1997).

<sup>8</sup> Gov’t Code § 6253(b).

<sup>9</sup> See *Rosenthal v. Hansen*, 34 Cal. App. 3d 754 (3 Dist. 1973) (holding that under the former Section 6256, an agency need not provide exact copies if doing so would be impracticable, but this does not excuse a public entity from producing the records at all).

<sup>10</sup> Gov’t Code § 6253(a).

<sup>11</sup> Gov’t Code § 6253(e).

record.<sup>12</sup> Even in cases where the subject of a particular record has argued that disclosure would violate the individual right to privacy guaranteed by the California Constitution, disclosure has been compelled.<sup>13</sup>

### **III. IS THE PUBLIC RECORDS ACT RELATED TO THE FREEDOM OF INFORMATION ACT?**

Persons who request access to public records frequently reference the Freedom of Information Act ("FOIA") as the basis for their request. The FOIA is a federal statute that does not apply to local government agencies. However, the Public Records Act was modeled after the FOIA, and we recommend that agencies respond to otherwise valid records requests even if the requester cites the FOIA instead of the Public Records Act.<sup>14</sup>

### **IV. TO WHICH LOCAL AGENCIES DOES THE PUBLIC RECORDS ACT APPLY?**

The Public Records Act applies to all local government agencies. Under the Public Records Act, a "local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; any board, commission or agency of any of these; and certain non-profit organizations of local agencies which are supported by public funds.<sup>15</sup>

### **V. WHAT ARE "PUBLIC RECORDS?"**

The Public Records Act defines "public records" as follows:

'Public records' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

The term "writing" means:

any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of

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<sup>12</sup> *LAPD v. Superior Court (Church of Scientology)*, 65 Cal. App. 3d 661, 668 (2 Dist. 1977).

<sup>13</sup> *Poway Unified Sch. Dist. v. Superior Court (Copley Press)*, 62 Cal. App. 4th 1496 (4 Dist. 1998).

<sup>14</sup> See *ACLU v. Deukmejian*, 32 Cal. 3d 440, 447 (1982) (Public Records Act modeled on FOIA, judicial construction and legislative history of federal act illuminate the interpretation of its California counterpart); *Cook v. Craig*, 55 Cal. App. 3d 773, 781 (3 Dist. 1976) (noting the similarity between the provisions of state and federal law).

<sup>15</sup> Gov't Code § 6252(a).

communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.<sup>16</sup>

These definitions encompass much more than written or printed documents. Public records include computer data, and an agency must provide computer records in any electronic format in which the agency holds the information. If a requester asks for the records in a particular format, the agency must provide the records in that format, provided it is a format used by the agency to create copies for its own use or for provision to other agencies unless an exception applies.<sup>17</sup> Note, however, that computer software developed by a local agency is not a “public record” subject to the Public Records Act.<sup>18</sup>

On the other hand, a requester’s rights under the Public Records Act are not unlimited. A local agency is not required to create a document or compile a list in response to a request under the Public Records Act.<sup>19</sup>

While these definitions are general, over the years the courts have both broadened and limited the scope of the definition of “public record.” First, it is clear that the term “public records” encompasses more than simply those documents that public officials are required by law to keep as official records. Rather, courts have held that a public record is one that is kept because it is “necessary or convenient to the discharge of [an] official duty.”<sup>20</sup> Second, courts have observed that merely because the writing is in the possession of the local agency, it is not automatically a public record. It must relate to the conduct of the public’s business.<sup>21</sup> Thus, personal notes and personal records, such as shopping lists or letters from friends that are totally void of public business, are not public records.<sup>22</sup> In addition, it is important to note that a record need not be a “document” to fall within the ambit of the Public Records Act. A public record is subject to disclosure under the Public Records Act “regardless of its physical form or characteristics.”<sup>23</sup>

Further, local agencies are obligated to determine whether a public records request seeks copies of disclosable public records in the “possession” of the

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<sup>16</sup> Gov’t Code § 6252(e), (g).

<sup>17</sup> Gov’t Code § 6253.9. For further discussion of the exception to this rule, see Part Two. Electronic Records, Section II.B. “Metadata” of this Handbook.

<sup>18</sup> Gov’t Code § 6254.9.

<sup>19</sup> Based upon the definition of “writing,” Gov’t Code § 6252(g), and the requirement that a requested record be “identifiable,” Gov’t Code § 6253(b); See also *Sander v. Superior Court*, 26 Cal. App. 5th 651, 665-66 (1 Dist. 2018).

<sup>20</sup> *Braun v. City of Taft*, 154 Cal. App. 3d 332, 340 (5 Dist. 1984); *San Gabriel Tribune v. Superior Court (City of West Covina)*, 143 Cal. App. 3d 762, 774 (2 Dist. 1983); *People v. Tomalty*, 14 Cal. App. 224, 231 (1 Dist. 1910).

<sup>21</sup> *Braun*, 154 Cal. App. 3d at 340; *San Gabriel Tribune*, 143 Cal. App. 3d at 774; Gov’t Code § 6252(e).

<sup>22</sup> *San Gabriel Tribune*, 143 Cal. App. 3d at 774.

<sup>23</sup> Gov’t Code § 6252(e).

agency.<sup>24</sup> On occasion, a local agency prepares, uses, or owns a document containing information related to the conduct of the public's business, but does not physically possess it, such as when a local agency hires a private consultant to conduct work on behalf of the agency. When the public record is in the possession of a private consultant or sub-consultant who does work for the local agency, the contractual relationship between the local agency and consultant or sub-consultant will likely determine whether the local agency is in possession of the documents.<sup>25</sup> In *Community Youth Athletic Center v. City of National City*, the court found that under the contract between the City and its consultant, the City had the right to possess and control the record that was the subject of a public records request, even if that local agency had not previously enforced its ownership right.<sup>26</sup> The court held that the City had an obligation "to make reasonable efforts to facilitate the location and release of the information."<sup>27</sup> The City's failure to assert its contractual right to obtain the record from the consultant violated the Public Records Act.<sup>28</sup> On the other hand, in *Anderson-Barker v. Superior Court of Los Angeles City.*, the court held that a city's ability to access electronically-stored data did not equate to a form of possession of the data when a city does not direct what information a third party contractor places on its databases, and has no authority to modify the data in any way.<sup>29</sup> Similarly, in *Consolidated Irrigation District v. Superior Court*, the court found that the City had no control over a sub-consultant's records.<sup>30</sup> The sub-consultant had been hired by the City's primary consultant, and based on the facts in that case, the City had no obligation under the Public Records Act to obtain and produce the records of the sub-consultant.

## **VI. HOW DOES A LOCAL AGENCY DETERMINE THE SCOPE OF A PUBLIC RECORDS REQUEST?**

Most public records requests are straightforward. The public is familiar with records regularly kept by a local agency, such as meeting minutes, staff reports, financial reports, and other documents discussed at public meetings. Requests for those records are easy to fulfill. Many of these records may be available on a local agency's website, and the Public Records Act allows a local agency to satisfy a request for public records by directing the requester to that website.<sup>31</sup> Sometimes, the public is unfamiliar with the types of records maintained by local

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<sup>24</sup> Gov't Code § 6253(c).

<sup>25</sup> *Consolidated Irrigation District v. Superior Court (City of Selma)*, 205 Cal. App. 4th 697, 709-11 (5 Dist. 2012); *Community Youth Athletic Center v. City of National City*, 220 Cal. App. 4th 1385, 1427-29 (4 Dist. 2013); see also *Regents of the University of California v. Superior Court*, 222 Cal. App. 4th 383, 398 (1 Dist. 2013).

<sup>26</sup> *Community Youth Athletic Center*, 220 Cal. App. 4th at 1428.

<sup>27</sup> *Id.* at 1429.

<sup>28</sup> *Id.*

<sup>29</sup> *Anderson-Barker v. Superior Court of Los Angeles Cty.*, 2019 WL 27605 (2 Dist. Jan. 22, 2019).

<sup>30</sup> *Consolidated Irrigation District*, 205 Cal. App. 4th at 711.

<sup>31</sup> Gov't Code § 6253.

agencies. The requester may not be able to provide the specificity necessary to identify a public record, or the request may be so broadly stated that a local agency cannot reasonably determine which records fall within the scope of the request.

Under those circumstances, the Public Records Act imposes duties on both local agencies and requesters. Local agencies must assist a requester to formulate a “focused and effective request that reasonably describes an identifiable record or records,” by following certain procedural requirements.<sup>32</sup> Likewise, the requester is obligated to engage in this process, and communicate to the custodian of records the scope of the public information requested. Both the local agency and the requester must be reasonable in this process.<sup>33</sup>

## **VII. CAN A LOCAL AGENCY RELINQUISH ITS PUBLIC RECORDS ACT OBLIGATIONS TO SOMEONE ELSE?**

A local agency cannot sell or provide a public record subject to disclosure under the Public Records Act to a private entity in a manner that prevents the local agency from providing the record directly.<sup>34</sup> For example, the county recorder cannot transfer all birth and death records to a private company and insist that the public obtain birth certificates from the private entity.

Similarly, a local agency may not enter into a contract that allows another party to control the disclosure of information that is subject to the Public Records Act.<sup>35</sup> For example, a contract provision that requires the consent of a contractor before a local agency may release a public record prepared by the contractor violates the Public Records Act. Additionally, if a local agency enters into a contract that requires a private entity to review, audit, or report on any aspect of the local agency, that contract must be made available to the public upon request, unless the contract is exempt from disclosure pursuant to another exemption in the Public Records Act.<sup>36</sup>

## **VIII. MUST A PUBLIC RECORDS ACT REQUEST BE MADE IN WRITING, OR MAY IT BE MADE ORALLY?**

Nothing in the Public Records Act requires a member of the public to place his or her request for public records in writing.<sup>37</sup> While many local agencies provide forms on their website or at their offices for making a written Public Records Act

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<sup>32</sup> Gov’t Code § 6253.1. Further discussion of these procedural requirements is in Section X, below.

<sup>33</sup> *Community Youth Athletic Center v. National City*, 220 Cal. App. 4th 1385, 1427 (4 Dist. 2013).

<sup>34</sup> Gov’t Code § 6270(a).

<sup>35</sup> Gov’t Code § 6253.3.

<sup>36</sup> Gov’t Code § 6253.31.

<sup>37</sup> *Los Angeles Times v. Alameda Corridor Transp. Authority*, 88 Cal. App. 4th 1381, 1392 (2 Dist. 2001).

request, a requester is not required to use the form offered. An oral request is sufficient to trigger the requirements of the Public Records Act.

Additionally, an argumentative or disruptive requester cannot be permanently banned from the premises by a local agency or forced to make their requests in writing.<sup>38</sup> However, the right to inspect public records is subject to the implied rule of reason that enables the custodian of public records to formulate regulations necessary to prevent interference with the orderly functioning of the agency's office.<sup>39</sup> If faced with a loud or angry person who is making an oral request, and the records are not immediately available, it is advisable for staff to write down the request and tell the requester the agency will respond in writing within the time limits specified in the Public Records Act. Your City attorney can provide additional guidance in the event a member of the public is repeatedly abusive towards staff.

## **IX. WHAT PUBLIC RECORDS ARE EXEMPT FROM DISCLOSURE UNDER THE PUBLIC RECORDS ACT?**

### **A. Disclosure of Exempt Records Waives Confidentiality**

The Public Records Act specifically exempts a number of categories of records from disclosure requirements. If documents are exempt from disclosure, it is important that confidentiality be maintained. Once an otherwise exempt record is knowingly released to any member of the public, disclosure constitutes a waiver of the exemption for that record, and the record must be provided to any subsequent requesting member of the public.<sup>40</sup> This waiver ensures a public agency does not carry out "selective disclosure," wherein some members of the public are provided the right of access to specific records, while some requests for the same records are denied by the public agency for the same materials.<sup>41</sup>

There are a few situations where the knowing disclosure of an otherwise exempt record does not constitute a waiver of exemption. Exemptions are not waived when disclosures are made:

- Through discovery procedures associated with lawsuits or in court proceedings;
- Pursuant to a statute that limits disclosure for specified purposes;

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<sup>38</sup> *Galbiso v. Orosi Public Utility District*, 167 Cal. App. 4th 1063, 1088-89 (5 Dist. 2008).

<sup>39</sup> *Bruce v. Gregory*, 65 Cal. 2d 666, 676 (1967); *Rosenthal v. Hansen*, 34 Cal. App. 3d 754, 761 (1973); 64 Ops. Cal. Atty. Gen. 317 (1981).

<sup>40</sup> Gov't Code § 6254.5.

<sup>41</sup> *Black Panther Party v. Kehoe*, 42 Cal. App. 3d 646, 658 (3 Dist. 1974).

- When not required by law and prohibited by formal action of the elected legislative body of the local agency; or
- To another government agency that agrees to treat the records as confidential.<sup>42</sup>

The California Supreme Court held that a public agency's inadvertent disclosure resulting from human error does not waive an exemption.<sup>43</sup> In *Ardon v. City of Los Angeles*, the City of Los Angeles inadvertently disclosed several attorney-client and attorney work product documents in response to a PRA request. The requester was an attorney actively involved in pending litigation against the City.<sup>44</sup> After becoming aware of the inadvertent disclosure, the City filed a motion in court seeking the return of the privileged materials.<sup>45</sup> The California Supreme Court held that the Public Records Act's waiver provision<sup>46</sup> applied only to intentional and not inadvertent disclosure.<sup>47</sup> The court justified this distinction by finding that the City of Los Angeles had not engaged in selective disclosure: "[r]ather, it seeks no disclosure; it is trying to force plaintiff's attorney to return the privileged documents unread."<sup>48</sup>

The California Supreme Court's decision in *Ardon v. City of Los Angeles* allows a public agency to argue that a disclosure was inadvertent and ask for return of exempt records that were released in error. However, nothing in the Public Records Act compels the requester to return the records. Instead, the public agency must go to court to obtain a judicial order directing the requester to return or destroy the inadvertently disclosed records.<sup>49</sup> This presents a number of problems. First, the circumstances surrounding the dissemination of those materials would have to be evaluated on a case-by-case basis by the reviewing court.<sup>50</sup> The court may not agree with the public agency's assertion that the disclosure was inadvertent. Second, if the exempt records were given widespread distribution before the error was found, a court may decide not to order return of the records. Once the information is in the public sphere, the bell cannot be unrung. Third, it is costly to go to court to seek injunctive relief.

Consequently, public agencies should continue to conduct a thorough and exhaustive review of responsive documents before releasing any materials in response to a Public Records Act request. The California Supreme Court

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<sup>42</sup> Gov't Code § 6254.5. Additional exceptions apply to specific state agencies.

<sup>43</sup> *Ardon v. City of Los Angeles*, 62 Cal. 4th 1176 (2016).

<sup>44</sup> *Ardon*, 62 Cal. 4th at 1180-82.

<sup>45</sup> *Id.* at 1181.

<sup>46</sup> Gov't Code § 6254.5.

<sup>47</sup> *Ardon*, 62 Cal. 4th at 1180.

<sup>48</sup> *Id.* at 1185-86.

<sup>49</sup> See *Newark Unified School District v. Superior Court*, 245 Cal. App. 4th 887 (1 Dist. 2015).

<sup>50</sup> *Id.* at 910.

acknowledged that its decision was limited to “truly inadvertent disclosures and must not be abused to permit the type of selective disclosure” prohibited by the Public Records Act.<sup>51</sup> Further, the California Supreme Court emphasized that a public agency’s own characterization of its intent is not dispositive.<sup>52</sup> The best practice continues to be to complete a thorough review before releasing responsive records.

## **B. Statutory Exemptions for Confidential Records**

The following is a list of the statutory exemptions. This list is not exhaustive.

### **(1) Public agency employees’ personal information.**

Gov’t Code § 6254.3.

Recent legislation has expanded protections for specified personal information of all public agency employees. The home addresses, personal cellular telephone numbers and birth dates of all public agency employees are not considered to be public records subject to disclosure, except in limited circumstances. The Public Records Act also requires local agencies to redact social security numbers from records before disclosing the records to the public in response to a Public Records Act request.<sup>53</sup>

### **(2) Referendum, recall and initiative petitions and related material.**

Gov’t Code § 6253.5.

Election-related petitions and all memoranda prepared by the county elections officials in their examination of the petitions indicating which registered voters signed the petitions are strictly confidential. These materials may be viewed only by elections officials and their deputies. Other officials, including agency attorneys, must obtain a court order to view petitions. If the elections officials determine that a petition is legally insufficient, petition proponents and their representatives designated in writing must be permitted to review these materials.

### **(3) The identity of persons who have requested bilingual ballots or ballot pamphlets.**

Gov’t Code § 6253.6.

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<sup>51</sup> *Ardon*, 62 Cal. 4th at 1190.

<sup>52</sup> *Id.*

<sup>53</sup> Gov’t Code § 6254.29.

**(4) Preliminary drafts, notes, or interagency or intra-agency memoranda.**

Gov't Code § 6254(a).

Public officials should be aware that preliminary drafts and notes, along with interagency and intra-agency memoranda, are exempt from disclosure as public records if those documents are not customarily retained by the local agency in the ordinary course of business and the public interest in withholding those records clearly outweighs the public interest in disclosure.<sup>54</sup>

In considering whether to use this exemption, agencies should determine whether the disclosure of a preliminary draft, note, or interagency or intra-agency memorandum would further the interest of the Act in open government. The fact that the document is merely a step in the process and does not provide important information about the public's business probably weighs in favor of nondisclosure.

The key questions in this area generally may be boiled down to whether a draft, note, or interagency or intra-agency memorandum is one which:

- Is not normally kept by the agency in the ordinary course of business;
- Is not prepared or kept to document or memorialize the day-to-day transaction of the public's business;
- Is merely a temporary step in the process of preparing a final document, reaching a final decision, or determining a course of action; and
- Would expose the agency's decision-making process if disclosed,<sup>55</sup> and the public interest in nondisclosure clearly outweighs the public interest in disclosure.

If the document qualifies under all four categories above, the document probably is exempt from disclosure under the Public Records Act. Documents that do not satisfy one or more of the categories above probably are public records that must be disclosed unless another exemption applies. You should keep in mind, however, that any doubt or question in this regard likely will be decided in favor of disclosure of the record.

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<sup>54</sup> Gov't Code § 6254(a).

<sup>55</sup> *Citizens for a Better Environment v. Dep't of Food and Agriculture*, 171 Cal. App. 3d 704, 715-16 (3 Dist. 1985) (concluding that "[t]he interest in fostering robust agency debate" is the only public interest that can justify nondisclosure under Section 6254(a)).

In discussing whether a record has not been retained in the ordinary course of business, one court observed, “[i]f preliminary materials are not customarily discarded or have not in fact been discarded as is customary they must be disclosed.”<sup>56</sup> One of the purposes of this condition is to prevent “secret law,” that is, an undisclosed collection of written rules guiding the agency’s decisions.<sup>57</sup>

Consequently, a record that must be retained pursuant to a local agency’s records retention schedule, policies or customs does not fall within this exemption. For example, if a policy decision is made to retain drafts in order to document the bargaining history after an agreement is negotiated; those drafts likely are not exempt under Section 6254(a). Also, if it is permissible under an agency’s records retention schedule to destroy preliminary documents, but the agency retained such a document after the final report is prepared, the preliminary document arguably is not exempt under Section 6254(a).

**(5) Records pertaining to pending litigation to which the agency is a party.**

Gov’t Code § 6254(b).

Under this exemption, records actually created by an agency for its own use in litigation are exempt from disclosure under the Public Records Act.<sup>58</sup> Previously created or disclosed records may not be retroactively re-classified as being exempt under this Section.<sup>59</sup> Generally, courts will examine the “dominant purpose” behind the document’s creation.<sup>60</sup> Documents prepared “by a public entity for its own use in anticipation of litigation, which documents it reasonably has an interest in keeping to itself until litigation is finalized” are protected by the exemption.<sup>61</sup> Thus, while documents created prior to the commencement of litigation appear to receive greater scrutiny to determine their dominant purpose, the exemption can apply to documents created before litigation has commenced, that is, before a claim has been made with the local agency under the Government Claims Act or a complaint filed with a court. Once litigation is concluded, however, the exemption will no longer apply.<sup>62</sup>

This exemption also applies to litigation-related documents, even if not created by an agency, when sought by persons or entities not a party to the litigation and which the parties to the litigation do not intend to be revealed outside the

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<sup>56</sup> *Id.* at 714.

<sup>57</sup> *Id.* at 714 n.7.

<sup>58</sup> *Fairley v. Superior Court (City of Long Beach)*, 66 Cal. App. 4th 1414, 1421-22 (2 Dist. 1998).

<sup>59</sup> *City of Hemet v. Superior Court (Press-Enterprise Co.)*, 37 Cal. App. 4th 1411, 1420 & n.11 (4 Dist. 1995).

<sup>60</sup> *Fairley*, 66 Cal. App. 4th at 1420.

<sup>61</sup> *Id.* at 1421 (emphasis added).

<sup>62</sup> *City of Los Angeles v. Superior Court (Axelrad)*, 41 Cal. App. 4th 1083, 1089 (2 Dist. 1996).

litigation. This exemption does not cover deposition transcripts because they are available to the public under another statute.<sup>63</sup> And where a plaintiff generally is required to file a claim under the Government Claims Act to initiate litigation against a local agency, the actual claim form filed with the local agency is not exempt under this Section as “[t]here is no unfair disadvantage [in the pending litigation] to the public entity from disclosure of the mere claim form.”<sup>64</sup>

## **(6) Personnel, medical or similar records.**

Gov’t Code §§ 6254(c); 6254.3.

When the disclosure of personnel, medical or similar files would constitute an unwarranted invasion of personal privacy, this exemption applies. In determining whether personnel records should be disclosed, courts first decide whether disclosure would compromise the individual’s substantial privacy interest. If it does, the court determines whether the potential harm to those interests caused by disclosure outweighs the public interest in disclosure.<sup>65</sup> As will be discussed below, the California Supreme Court has concluded that public employees in general have a significantly reduced expectation of privacy in their salaries, and that the strong public interest in knowing how the government spends its money justifies disclosure of salary information.<sup>66</sup> And at least one appellate court has found that where the public employee is in a position of authority, such as a superintendent of a school district, the individual has “a significantly reduced expectation of privacy in the matters of his [or her] public employment.”<sup>67</sup>

This exemption for personnel, medical or similar records does not justify withholding employment agreements. By statute, employment agreements between a local agency and any public official or public employee is a public record not subject to the exemptions of Sections 6254 or 6255 of the Government Code.<sup>68</sup>

This exemption for personnel records also does not justify withholding personnel records concerning incidents involving the discharge of a firearm at a person by

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<sup>63</sup> *Board of Trustees of California State Univ. v. Superior Court (Copley Press, Inc.)*, 132 Cal. App. 4th 889, 901-902 (4 Dist. 2005).

<sup>64</sup> *Poway Unified Sch. Dist. v. Superior Court (Copley Press)*, 62 Cal. App. 4th 1496, 1505 (4 Dist. 1998).

<sup>65</sup> *Versaci v. Superior Court (Palomar Cmty. Coll. Dist.)*, 127 Cal. App. 4th 805, 818-820 (4 Dist. 2005).

<sup>66</sup> *International Federation of Professional and Technical Engineers, LOCAL 21, AFL-CIO, v. Superior Court, (Contra Costa Newspapers, Inc.)*, 42 Cal. 4th 319, 329-333 (2007) (*International Federation*).

<sup>67</sup> *BRV, Inc. v. Superior Court (Dunsmuir Joint Union High School District)*, 143 Cal. App. 4th 742, 758 (3 Dist. 2006) (ordering reports investigating allegations of misconduct disclosed, as the public’s interest in why the district entered into a termination agreement with the superintendent that appeared to the public to be a “sweetheart deal” outweighed the superintendent’s interest in preventing disclosure of the reports).

<sup>68</sup> Gov’t Code § 6254.8.

a peace officer that resulted in death or great bodily injury, or records concerning a sustained finding that a peace officer engaged in sexual assault or dishonesty.<sup>69</sup>

### Disclosure of Public Employee Salaries

The California Supreme Court has held that salaries of public employees are not exempt from disclosure. In *International Federation of Professional and Technical Engineers v. Superior Court*, (Contra Costa Newspapers, Inc.),<sup>70</sup> the California Supreme Court held that individually identifiable salary information is not exempt from disclosure under the Public Records Act, the California Constitution or the Penal Code. In this case, a newspaper sought disclosure from the City of Oakland of names, job titles and gross salaries of City employees earning \$100,000 or more each year, including overtime. The City provided salary and overtime information for each job classification but refused to provide salary information linked to individual employees. The newspaper sued to obtain disclosure of the records under the Public Records Act. The Supreme Court held that a public entity's payroll expenditures are public records, and that disclosure of salary records for City employees earning \$100,000 or more each year is not an unwarranted invasion of personal privacy.<sup>71</sup>

With regard to peace officers, the Supreme Court rejected the police union's argument that Penal Code Sections 832.7 and 832.8 bar disclosure of the amount of a peace officer's salary.<sup>72</sup> The Supreme Court ruled that salary information of peace officers does not constitute "personnel records" under Penal Code Sections 832.7 or 832.8, and is not information obtained from personnel records.<sup>73</sup> As such, the Penal Code does not mandate that peace officer salary information be excluded from disclosure under the Public Records Act.

The Supreme Court also rejected the argument that each public records request must be evaluated on a case-by-case basis to evaluate the individual employee's privacy interests and the particular public interest at issue.<sup>74</sup> The

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<sup>69</sup> Penal Code §§ 832.7, 832.8.

<sup>70</sup> *International Federation*, 42 Cal. 4th 319 (2007).

<sup>71</sup> The Supreme Court also narrowed the precedential value of *Teamsters Local 856 v. Priceless, LLC.*, 112 Cal. App. 4th 1500 (2003), review denied (Jan. 22, 2004). The appellate court in *Priceless* held that names, job titles, and W-2 information of City employees was confidential information and not subject to disclosure under the Public Records Act because the City in question had a prior practice of treating that information as confidential. To the extent that *Priceless* could be read as holding that a City's practice of refusing to disclose certain information had created a privacy interest in those records, the California Supreme Court disagreed and refused to adopt that holding. *International Federation*, 42 Cal. 4th at 336.

<sup>72</sup> *Id.*, at 343.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 336.

Court stated that this would reverse the presumption of openness of public records mandated by the Public Records Act, and the public entity bears the burden of demonstrating that particular records are exempt.<sup>75</sup> The Court, however, left open the possibility that a public entity may, on a case-by-case basis, decline to release records pertaining to individual employees where anonymity is essential to their safety, such as undercover narcotics officers.

Although this decision arose in the context of a public records request for the names and salaries of City employees earning more than \$100,000 per year, the Supreme Court's reasoning may have general application to salary information for all City employees, regardless of level of salary.

In a companion case, *Commission on Peace Officer Standards and Training v. Superior Court*, the California Supreme Court addressed the confidentiality of certain non-salary information.<sup>76</sup> In this case, the Commission refused to provide the names, employing departments, and hiring and termination dates of peace officers from its database. The Commission maintains the database to monitor participating law enforcement departments' compliance with Peace Officer Standards and Training ("POST") regulations. The California Supreme Court held that the names, employing departments, and hiring and termination dates of peace officers are not confidential under Penal Code Sections 832.7 and 832.8, and are not exempt from disclosure under the Public Records Act. The California Supreme Court, however, remanded the case to the lower courts to allow the Commission the opportunity to establish that information regarding particular officers or categories of officers should be excised from the disclosed records in order to protect the safety or efficacy of those peace officers.

## **(7) Arrest records, complaint reports, investigatory and security files.**

Gov't Code § 6254(f).

This exemption strictly limits the information required to be disclosed about arrests, complaints and investigations.<sup>77</sup> Records of complaints to or investigations conducted by police agencies generally may be withheld.

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<sup>75</sup> *Id.* at 336-37.

<sup>76</sup> *Commission on Peace Officer Standards and Training v. Superior Court*, 42 Cal. 4th 278 (2007); see also, *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal. 4th 59 (2014).

<sup>77</sup> The scope of "records of investigation" is narrowly construed. *American Civil Liberties Union Foundation v. Superior Court*, 3 Cal. 5th 1032, 1039 (2017); *City of San Jose v. Superior Court*, 2 Cal. 5th 608, 616-617 (2017). Records of investigation exempted under Section 6254(f): "encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred. If a violation or potential violation is detected, the exemption also extends to records of investigations conducted for the purpose of uncovering information surrounding the commission of the violation and its agency." *Haynie v. Superior Court*, 26 Cal. 4th 1061, 1072 (2011). In *American Civil Liberties Union of Southern California v. Superior Court*, the California Supreme Court declined to extend the meaning of "investigation" to cover bulk raw data obtained as part of a mass personal data collection, because there was no targeted "investigation" into a particular criminal act. 3 Cal. 5th 1032, 1041.

Investigatory or security files compiled by a local agency for law enforcement or licensing purposes are also covered by the exemption, provided “there is a concrete and definite prospect of criminal law enforcement proceedings.”<sup>78</sup> This exemption extends indefinitely, even after investigations are concluded.<sup>79</sup> In most cases, agencies are required to disclose to the public<sup>80</sup> the full name, current address and occupation of every person arrested by the agency, including a general physical description, along with the date and time of arrest. This disclosure, however, is not required where it would endanger the safety of a person involved in an investigation or jeopardize the successful completion of the pending investigation or a related investigation.

While investigations conducted by police agencies are generally not disclosable, investigations of police agencies may be subject to PRA requests. When releasing records pertaining to investigations of police agencies, the agency must redact or otherwise withhold any information that is part of a police officer’s confidential personnel file.<sup>81</sup> Counsel should be consulted to ensure that confidential information is not disclosed.

In addition, local agencies are required to disclose to the public the time, substance and general location of all complaints and requests for assistance, and the time and nature of the agency’s response. However, no disclosure may be made to any arrested person or defendant in a criminal action of the address and telephone number of any person who is a victim or witness in an alleged offense.<sup>82</sup> Further, this disclosure is not required where it would endanger the safety of a person involved in an investigation or jeopardize the successful completion of the pending investigation or a related investigation.

In all cases, the address of a victim of an alleged sex offense must be withheld.<sup>83</sup> Additionally, the name of the victim of an alleged sex offense must be withheld if the victim or a minor victim’s parent or guardian requests it be withheld. While the law refers to “sex offenses,” the crimes listed in Section 6254(f) include sexual assault, child molestation, child abuse, hate crimes and stalking.

The Public Records Act prohibits the commercial use of arrest and arrestee information, and requires that persons requesting such information sign a declaration, under penalty of perjury, that the request is made for a scholarly, journalistic, political, or governmental purpose, or for investigation by a licensed

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<sup>78</sup> *Dixon v. Superior Court (Neves)*, 170 Cal. App. 4th 1271, 1277 (3 Dist. 2009) (internal quotation omitted).

<sup>79</sup> *Rackauckas v. Superior Court (Los Angeles Times Communications)*, 104 Cal. App. 4th 169, 174-178 (4 Dist. 2002).

<sup>80</sup> Section 6254(f) also authorizes release of certain limited information to the victim of a crime and other interested parties, above and beyond that information released to the public generally.

<sup>81</sup> *Pasadena Police Officers Association v. City of Pasadena*, 22 Cal. App. 5th 147 (2 Dist. 2018).

<sup>82</sup> Penal Code § 841.5.

<sup>83</sup> Penal Code § 293.

private investigator.<sup>84</sup> This requirement, however, may have limited applicability given the outcome of litigation by United Reporting Publishing Corporation against the California Highway Patrol.<sup>85</sup> Subsequent to that case, the Attorney General issued an opinion that a law enforcement agency may not require that a requester present subscriber lists, copies of publications or other verification of a journalistic purpose and the requester is not required to monitor subscribers to prohibit them from using the information for commercial purposes.<sup>86</sup>

### Disclosure of Certain Police Department Records

Penal Code sections 832.7 and 832.8, which previously provided that peace officer personnel records are confidential and subject to disclosure only after a granted *Pitchess* Motion, were recently amended. Now, certain peace officer personnel records and records relating to specified incidents, complaints, and investigations must be made available to the public under the Public Records Act. Penal Code sections 832.7 and 832.8 now provide that an agency must disclose any record relating to the report, investigation, or finding of:

- an incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
- an incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury.
- When a sustained finding was made that a peace officer or custodial officer engaged in sexual assault involving a member of the public.
- When a sustained finding was made of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.<sup>87</sup>

As of July 1, 2019, the Act will require an agency to disclose audio and video recordings that relate to a “critical incident.” A recording relates to a critical

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<sup>84</sup> Gov’t Code § 6254(f)(3). A commercial publisher of criminal records challenged the constitutionality of this limitation on disclosure, but the United States Supreme Court held that the statute did not violate the First Amendment to the U.S. Constitution. *Los Angeles Police Dep’t v. United Reporting Publ’g Corp.*, 528 U.S. 32 (1999).

<sup>85</sup> *United Reporting Publ’g Corp. v. California Highway Patrol*, No. 96-CV-0888-B (S.D. Cal. Aug. 13, 2001) (final judgment on consent) (“As applied to United Reporting’s activities as described in this lawsuit, section 6254(f)(3) violates United Reporting’s rights under the First Amendment to the United States Constitution by preventing United Reporting from engaging in its journalistic activities as described above.”)

<sup>86</sup> 89 Ops. Cal. Att’y Gen. 97 (2006).

<sup>87</sup> As of the date of this publication, there is pending litigation concerning Penal Code section 832.7 and whether it is applicable to records created or acts that occurred prior to January 1, 2019.

incident if it depicts an incident involving the discharge of a firearm at a person by a peace officer or custodial officer; or an incident in which the use of force by a peace officer or custodial officer resulted in death or great bodily injury.<sup>88</sup>

The foregoing is a brief overview of this detailed and complex exemption. Police and code enforcement staff should familiarize themselves with the complete requirements of this Section prior to responding to requests for arrest and complaint information.

**(8) Information required from any taxpayer in connection with the collection of local taxes.**

Gov't Code § 6254(i).

This exemption applies to information that a city or other local agency requires from any taxpayer in connection with the collection of local taxes if that information is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information. One frequent example of this is the submittal of sales or income information under a business license tax requirement where the city has indicated in its business license tax ordinance that the financial information provided will be kept confidential. If the business license is required by ordinance to list the amount of tax paid and be posted at the place of business, however, the amount of tax paid arguably is not confidential.

**(9) Library circulation records.**

Gov't Code § 6254(j).

While this exemption protects from disclosure library circulation records kept for the purpose of identifying the borrower of items available in libraries, it is not applicable to records of fines imposed on the borrowers.

**(10) Records exempt from disclosure under other laws including, but not limited to, the Evidence Code sections relating to privilege.**

Gov't Code § 6254(k).

This provision of the Public Records Act exempts from disclosure every document held by a local agency that is legally privileged or confidential under some law outside the Public Records Act. The most common example of this exemption protects documents subject to the attorney-client privilege or the attorney work-product doctrine. It is important to note that neither the Public Records Act nor

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<sup>88</sup> Section 6254(f)(4), effective July 1, 2019.

the Brown Act abrogate those important privileges for communications between a local agency and its legal counsel.<sup>89</sup>

For example, in *Los Angeles County Board of Supervisors v. Superior Court*, the Supreme Court ruled that the attorney-client privilege protects the confidentiality of invoices for legal work in pending and active legal matters.<sup>90</sup> The Court reasoned that such invoices are so closely related to attorney-client communications that they may reveal legal strategy or consultation. The Court emphasized, however, that the attorney-client privilege does not categorically shield everything in a billing invoice from PRA disclosure.

This case also reaffirms the principle that the Public Records Act does not permit public agencies to withhold an entire document that contains both exempt and nonexempt information. On this point, the Supreme Court ruled that agencies must use “the equivalent of a surgical scalpel to separate those portions of a record subject to disclosure from privileged portions” unless records are not “reasonably segregable.”<sup>91</sup> Further, the Court stressed that any ambiguity must be construed in “whichever way will further the people’s right of access.”<sup>92</sup>

On remand, the Court of Appeal clarified that specific billing entries and descriptions of work contained in attorney invoices are not subject to disclosure under the PRA, whether they related to pending, ongoing or long-concluded legal matters. The Court further found that cumulative fee totals contained in attorney invoices for pending or ongoing legal matters are also protected from disclosure by the attorney-client privilege. And finally, it found that cumulative fee totals for matters concluded long ago may be subject to disclosure only if the cumulative fee totals do not reveal anything about the legal consultation or provide any insight into legal strategy.<sup>93</sup> Whether or not any particular fee total must be disclosed is a factual inquiry for the trial court.<sup>94</sup>

While a full discussion of attorney-client privilege and attorney work product is outside the scope of this Handbook, it is worth noting that one court held that a city waived those privileges for communications it sent to a developer prior to approval of a development project under the California Environmental Quality Act (CEQA).<sup>95</sup> The court held that the “common interest doctrine,” which generally allows disclosure of privileged communications to third parties with a common interest in a legal matter, did not apply to prevent the city’s waiver.<sup>96</sup>

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<sup>89</sup> *Roberts v. City of Palmdale*, 5 Cal. 4th 363, 377 (1993).

<sup>90</sup> *Los Angeles County Board of Supervisors v. Superior Court*, 2 Cal. 5th 282 (2016).

<sup>91</sup> *Id.*, at 292.

<sup>92</sup> *Id.* (citing *Ardon v. City of Los Angeles*, 62 Cal. 4th 1176, 1190 (2016), and Cal. Const., art. I, § 3, subd. (b)(2)).

<sup>93</sup> *County of Los Angeles v. Superior Court*, 12 Cal.App. 5th 1264, 1274 (2 Dist. 2017).

<sup>94</sup> *Id.*

<sup>95</sup> *Citizens for Ceres v. Superior Court (City of Ceres)*, 217 Cal. App. 4th 889, 922 (5 Dist. 2013).

<sup>96</sup> *Id.* at 914-921.

As a result, the city was required to include its attorneys' communications with the developer in the administrative record it prepared. In light of this opinion, local agencies should be cautious in sharing documents and legal opinions prepared by the agency's attorney with a project developer, and recognize that in the event it does share such documents and opinions of its attorneys, those disclosures likely waive the agency's privilege.

In *Labor and Workforce Development Agency v. Superior Court*, the Court of Appeal extended the protection afforded by Section 6254(k) to documents revealing the deliberative process of an agency, even going so far as to prevent the disclosure of the identities of persons with whom the agency confidentially communicated, and the general subject matter of the communications.<sup>97</sup>

Determining which other confidentiality laws are incorporated into the Public Records Act has always been difficult and time-consuming. In 1998, the Legislature attempted to address this problem by enacting a statute that lists most of the exemptions found in other laws.<sup>98</sup> The list begins at Government Code Section 6276 and continues for more than 20 pages. Although the Public Records Act cautions that this list may not be complete, it is a helpful list.

Two 1995 Court of Appeal decisions<sup>99</sup> illustrate how documents made confidential by another law are exempt from disclosure under the Public Records Act. Both courts found that information relating to complaints against peace officers is confidential and a part of that peace officer's personnel file under Penal Code Section 832.7, and therefore exempt from disclosure under the Public Records Act. More recently, the Court of Appeal held these complaints, along with any other records generated in connection with possible administrative discipline, remain exempt from disclosure even when contained in a report investigating possible criminal wrongdoing and otherwise disclosable under the public records requests.<sup>100</sup> Please note, however, that Penal Code Section 832.7 relating to disclosure of peace officer records was substantially amended, effective January 1, 2019, as discussed on page 17 of this Handbook.

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<sup>97</sup> *Labor and Workforce Development Agency v. Superior Court*, 19 Cal. App. 5th 12 (3 Dist. 2018).

<sup>98</sup> Stats. 1997, c. 620 (S.B. 143 – Kopp).

<sup>99</sup> *City of Richmond v. Superior Court (San Francisco Bay Guardian)*, 32 Cal. App. 4th 1430 (1 Dist. 1995); *City of Hemet*, 37 Cal. App. 4th 1411 (4 Dist. 1995); see also, *Copley Press, Inc. v. Superior Court (County of San Diego)*, 39 Cal. 4th 1272 (2006) (holding that records of a civil service commission, relating to a peace officer's administrative appeal of a disciplinary matter, were not subject to disclosure pursuant to the Public Records Act and Penal Code Section 832.7).

<sup>100</sup> *Pasadena Police Officers Association v. Superior Court*, 240 Cal. App. 4th 268, 290 (2 Dist. 2015).

**(11) Personal financial information required of licensees.**

Gov't Code § 6254(n).

When a local agency requires that applicants for licenses, certificates or permits submit personal financial data, that information is confidential. This exemption, however, does not apply to financial information filed by a franchisee to justify a rate increase, presumably because those affected by a rate increase have a right to know its basis.<sup>101</sup> The term "license" was narrowly construed by the court in *San Gabriel Tribune v. Superior Ct.* to exempt financial information of applicants whose business with the agency is only public because they must comply with licensing requirements and regulations. To give effect to the Public Records Act policy that favors disclosure over secrecy in government, the court concluded that a franchisee is akin to a contractual relationship and is not an applicant for a license under Section 6254(n).

**(12) Terrorist assessment reports.**

Gov't Code § 6254(aa).

A document prepared that assesses a local government's vulnerability to terrorist attacks or other criminal acts intended to disrupt the local agency's operations is exempt from disclosure if the document is prepared for distribution or consideration in a closed session of the local agency.

**(13) Voter registration information.**

Gov't Code § 6254.4.

The home address, telephone number, email address, precinct number and prior registration information shown on voter registration cards is confidential. Disclosure of that information is permitted only to candidates and campaigns, and to any person for election, scholarly, journalistic, or political purposes pursuant to Section 2194(a)(3) of the Elections Code. The driver's license number, social security number, and signature of the voter shown on the voter registration card are confidential and cannot be disclosed to any person.

We believe that this exemption extends to any document that by law must include the information made confidential by this Section, including applications for absentee ballots and returned absentee ballot packages. Beginning January 1, 2014, however, voter registration information identified under Section

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<sup>101</sup> *San Gabriel Tribune v. Superior Court (City of West Covina)*, 143 Cal. App. 3d 762, 779-780 (2Dist. 1983).

6254.4 of the Government Code must be made available to the public if it is at least one hundred years old.<sup>102</sup>

**(14) Utility customer information.**

Gov't Code § 6254.16.

The name, credit history, utility usage data, home address, and telephone number of utility customers of local agencies are exempt from disclosure, except in certain circumstances. This information may be disclosed to authorized family members of the person to whom the information pertains or his or her agent, to an officer or employee of another governmental agency when necessary to perform official duties, or upon court order or the request of law enforcement for an ongoing investigation. In addition, the information may be disclosed if the utility customer has used the utility services in a manner inconsistent with applicable local utility usage policies. If the utility customer is a public official with authority to determine utility usage policies, the information may be disclosed except that the home address of an appointed official may not be disclosed without the official's consent. Lastly, the information may be disclosed if the public interest in disclosure of the information clearly outweighs the public interest in nondisclosure.

**(15) Unauthorized Internet posting of officials' addresses and telephone numbers.**

Gov't Code § 6254.21.

The posting of the home address or telephone number of any elected or appointed official on the internet by a local agency without that individual's written permission is prohibited. The definition of "elected or appointed officials" includes, but is not limited to, members of a City council, members of a board of supervisors, mayors, City attorneys, police chiefs and sheriffs. It is a misdemeanor for any person to post such information with the intent to cause bodily injury to the official, his or her spouse or child. The official may bring an action for damages under certain circumstances. If bodily injury occurs as a result of the posting, then the posting could become a felony.

If a person, business, or association publicly posts on the internet the home address or telephone number of any elected or appointed official, the official may make a written demand to have the information removed. An official may bring an action in court to seek injunctive relief in the event the posting is not removed or is posted again during the four years that the written demand is in effect.

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<sup>102</sup> Cal. Elec. Code § 2194.1; Stats. 2013, c. 118 (S.B. 112 – Monning).

## **(16) Social Security Numbers.**

Gov't Code § 6254.29.

Local agencies must redact social security numbers from records before disclosing them to the public.

## **(17) General public interest exemption.**

Gov't Code § 6255.

In cases where a specific statutory exemption does not apply, a record still might be exempt from disclosure if:

on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.<sup>103</sup>

The numerous cases examining this “balancing test” make it clear that the burden is **on the local agency** to show that the public interest in confidentiality outweighs the public interest in disclosure. In fact, given the public policy involved, courts demand a demonstration of “clear overbalance” to justify non-disclosure.<sup>104</sup>

In practice, very few local agencies have been able to convince reviewing courts that the public interest in confidentiality outweighs the interest in disclosure. In the absence of a specific statutory exemption, this “catch-all” distinction rarely has been successfully relied upon to justify nondisclosure. Thus, local agencies must in good faith find a relatively rare “clear overbalance” to justify confidentiality on this ground.<sup>105</sup>

The right of privacy may provide a basis to shield disclosure of information under Government Code Section 6255. For example, relying on the right of privacy, the California Supreme Court ruled that disclosure of raw automated license plate reader data collected by a police department was protected from disclosure under this catch-all exemption.<sup>106</sup> The unaltered license plate scan data consisted of the plate number, date, time and location information of each license plate record.<sup>107</sup> The Supreme Court found that the act of revealing

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<sup>103</sup> Gov't Code § 6255.

<sup>104</sup> *City of Hemet*, 37 Cal. App. 4th at 1421; see also *Black Panther Party*, 42 Cal. App. 3d at 657.

<sup>105</sup> See, e.g., *Michaelis, Montanari & Johnson v. Superior Court (City of Los Angeles Dept. of Airports)*, 38 Cal. 4th 1065 (2006) (holding under “catch-all” exemption that proposals for lease and development of a hangar facility at public airport were exempt from disclosure until City had completed negotiations where negotiations were part of the competitive process).

<sup>106</sup> *American Civil Liberties Union Foundation v. Superior Court*, 3 Cal. 5th 1032, 1043-1044 (2017).

<sup>107</sup> *Id.*, at 1043.

the data would jeopardize the privacy of everyone associated with a scanned plate which was a significant threat to privacy because more than one million scans were conducted per week, and on that basis concluded that the public interest in preventing such disclosure “clearly outweighs the public interest served by disclosure of” these records.<sup>108</sup>

Two other areas in which a public interest in nondisclosure has been upheld involve public records disclosure that would adversely affect the deliberative process of a local agency, or the personal security of a public official. In *Times Mirror Co. v. Superior Court*,<sup>109</sup> for example, the State’s refusal to release the Governor’s schedule and appointment calendar out of concern for the Governor’s personal safety was upheld. Additionally, the State asserted that the disclosure of appointment calendars and schedules would “chill the flow of information” to the Governor and inhibit the free exchange of ideas in private meetings. The breadth of the request, however, may affect the balancing of interests. The public interest in nondisclosure may be less where the request is carefully focused and confined to a few documents.<sup>110</sup>

The Governor’s office won another Public Records Act case on the “deliberative process privilege” and the exemption for “correspondence of and to the Governor”<sup>111</sup> justifications in 1998 when the office refused to disclose applications submitted to the Governor for an appointment to a vacancy on a board of supervisors.<sup>112</sup>

On the local level, a city’s refusal to disclose the telephone records of council members was upheld to protect the same “deliberative process privilege.”<sup>113</sup>

Far more often, however, courts have found the public interest in disclosure outweighs the interest in confidentiality. Similarly, the Attorney General has issued several opinions favoring disclosure. Some illustrative cases and Attorney General opinions in this area include the following:

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<sup>108</sup> *Id.*, at 1044.

<sup>109</sup> See, e.g., *Michaelis, Montanari & Johnson v. Superior Court (City of Los Angeles Dept. of Airports)*, 38 Cal. 4th 1065 (2006) (holding under “catch-all” exemption that proposals for lease and development of a hangar facility at public airport were exempt from disclosure until City had completed negotiations where negotiations were part of the competitive process).

<sup>110</sup> *Id.* at 1344-46.

<sup>111</sup> Gov’t Code § 6254(l).

<sup>112</sup> *California First Amendment Coalition v. Superior Court (Wilson)*, 67 Cal. App. 4th 159 (3 Dist. 1998); see also *Wilson v. Superior Court (Los Angeles Times)*, 51 Cal. App. 4th 1136 (2 Dist. 1997), as modified.

<sup>113</sup> *Rogers v. Superior Court (City of Burbank)*, 19 Cal. App. 4th 469 (2 Dist. 1993).

- *Connell v. Superior Court (Intersource, Inc.)*<sup>114</sup>

Records relating to unpaid state warrants are public records and must be disclosed. The public interest in disclosure outweighs the public interest in preventing possible fraud that could be assisted through the release of too much information about the State's warrant system. The fact that the request was made solely for commercial purposes and profit did not affect the balancing test.<sup>115</sup>

- *Copley Press, Inc. v. Superior Court (M.P.R. - a minor)*<sup>116</sup>

As a matter of law, no compelling reason exists to seal the court records of a settlement reached between the insurer for a school district and a minor student who was sexually assaulted at school. The amount of settlement is a matter of public record.

- *CBS, Inc. v. Block*<sup>117</sup>

The possibility that public disclosure of applications for concealed weapons permits would discourage the filing of new applications, or that such disclosure might increase applicants' vulnerability to attack, did not justify nondisclosure.

- *Braun v. City of Taft*<sup>118</sup>

A City's nondisclosure of personnel records and letters appointing an employee and then rescinding the appointment was not justified by the theory that future applicants would not be candid if they knew personal information would be made public.

- *Humane Society of U.S. v. Superior Court  
(The Regents of the University of California)*<sup>119</sup>

A public university's nondisclosure of certain information relating to an academic study was justified because the interest in protecting the academic research process outweighed the interest in public disclosure. Disclosure would "fundamentally impair" the academic research process and the public would

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<sup>114</sup> 56 Cal. App. 4th 601 (3 Dist. 1997).

<sup>115</sup> Government Code Section 6257.5 states that the Public Records Act "does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure."

<sup>116</sup> 63 Cal. App. 4th 367 (4 Dist. 1998).

<sup>117</sup> 42 Cal. 3d 646 (2 Dist. 1986).

<sup>118</sup> 154 Cal. App. 3d 332 (5 Dist. 1984).

<sup>119</sup> 214 Cal. App. 4th 1233 (3 Dist. 2013).

suffer because the “‘quantity and quality’ of . . . academic research on important issues of public interest would be adversely affected.”<sup>120</sup>

- *Los Angeles Unified School District v. Superior Court* (Los Angeles Times)<sup>121</sup>

A school district's decision to redact the names of teachers in a statistical model measuring each teacher's effect on students' standardized test scores was proper because the detrimental interference with the district's ability to function properly clearly outweighed the interest in public disclosure. The scores had already been released to the public categorized by school, grade, subject and demographics; to require additional disclosure would sow discord among parents and teachers.

- *Long Beach Police Officers Assn. v. City of Long Beach*<sup>122</sup>

In a request by a newspaper for the names of peace officers involved in a fatal shooting, the California Supreme Court held that vague safety concerns – which apply equally to all officers involved in shootings that result in severe injury or death – were outweighed by the public's interest in such incidents. The California Supreme Court held that in order for names of peace officers involved in such incidents to be exempt from disclosure, there must be a particularized showing of safety concerns regarding those officers.

- 90 Ops. Cal. Att'y Gen. 40 (2007)

County recorder's accounting records that include a payment receipt showing the documentary transfer tax amount is subject to inspection under the Public Records Act. While the statutory scheme allows the documentary transfer tax to appear on a separate paper rather than on the recorded property conveyance document, that procedure provides only limited privacy protection for property owners and does not make the documentary transfer tax amount confidential.

- 81 Ops. Cal. Att'y Gen. 383 (1998)

Claims for senior citizens' exemptions from assessment of a parcel tax levied by a school district are subject to inspection by members of the general public. The concern that the residents' privacy would be compromised by solicitors targeting senior citizens was insufficient to overcome the public interest in disclosure.

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<sup>120</sup> *Id.* at 1263.

<sup>121</sup> 228 Cal. App. 4th 222 (2 Dist. 2014).

<sup>122</sup> 59 Cal. 4th 59 (2014).

## **X. WHAT IS THE PROPER PROCEDURE FOR COMPLYING WITH A PUBLIC RECORDS ACT REQUEST?**

The following is a brief outline of the proper response procedure, as required by Government Code Section 6253.

### **A. The agency has ten calendar days to determine whether to grant the request. Grounds for refusing a request include:**

- The request does not seek records which are “reasonably segregable” from records which are exempt from disclosure;<sup>123</sup>
- The request does not reasonably describe an identifiable record;<sup>124</sup>
- The request would require the agency to create new records not currently in existence; or<sup>125</sup>
- The request seeks records which are exempt from disclosure.<sup>126</sup>

Note, however, that the Public Records Act requires the disclosure of “reasonably segregable” portions of records. This means that if portions of a record are exempt and other parts of the same record are not, the non-exempt portions of the document must be disclosed.<sup>127</sup>

### **B. In “unusual circumstances” the agency may take up to an additional 14 calendar days to make the determination whether to grant the request. “Unusual circumstances” must be one of the following:**

- The need to search for and collect the requested records from field facilities or other locations separate from the office processing the request;<sup>128</sup>
- The need to search for, collect and examine a voluminous amount of separate and distinct records demanded in a single request;<sup>129</sup>

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<sup>123</sup> Gov’t Code § 6253(a).

<sup>124</sup> Gov’t Code § 6253(b).

<sup>125</sup> Based upon the definition of “writing,” Gov’t Code § 6252(g), and the requirement that a requested record be “identifiable,” Gov’t Code § 6253(b).

<sup>126</sup> Gov’t Code § 6253(b).

<sup>127</sup> Gov’t Code § 6253(a).

<sup>128</sup> Gov’t Code § 6253(c)(1).

<sup>129</sup> Gov’t Code § 6253(c)(2).

- The need for consultation with another agency having a substantial interest in the request or among two or more components of the agency having an interest in the subject matter of the request;<sup>130</sup> or
- The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.<sup>131</sup>

If the agency intends to use this additional time to respond, the agency must provide written notification to the requester that the additional time is required, the reason for the delay and the date on which a determination will be given.<sup>132</sup>

**C. When the agency has made a determination, the requester must be promptly notified of the agency's determination. This notification should be in writing and should include the following information:**

- Whether the request is being granted or denied;<sup>133</sup>
- If the request is being granted, the estimated date and time when the records will be made available (or where the records are located on the agency's website);<sup>134</sup>
- If the request was made in writing and is being denied, in whole or in part, the response must be in writing and include the extent and the reasons for the denial;<sup>135</sup>
- The name and title or position of the person responsible for the denial;<sup>136</sup>
- The cost or an estimate of the cost of copying the records, if a copy is requested, and a request for pre-payment. Note that this is only the direct cost of duplication, or a statutory fee, if applicable, and does not include staff time to research, retrieve or compile the records.<sup>137</sup> However, if the document requested is in electronic form, the agency may charge the full cost of reproducing the document when the record is one that is produced only at otherwise regularly scheduled intervals, or the request would require

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<sup>130</sup> Gov't Code § 6253(c)(3).

<sup>131</sup> Gov't Code § 6253(c)(4).

<sup>132</sup> Gov't Code § 6253(c).

<sup>133</sup> Gov't Code § 6253(c).

<sup>134</sup> Gov't Code § 6253(c).

<sup>135</sup> Gov't Code §§ 6255, 6253(c).

<sup>136</sup> Gov't Code § 6253(d).

<sup>137</sup> Gov't Code § 6253(b); *North County Parents Organization v. Dep't of Education*, 23 Cal. App. 4th 144 (4 Dist. 1994).

data compilation, extraction, or programming to produce the record.<sup>138</sup>

- The option to inspect the requested records at a mutually convenient time during office hours.<sup>139</sup>
- If in response to a public records request the agency directs a member of the public to the location of that public record on its website, the agency must still promptly provide a copy of the record itself if the member of the public requests a copy due to his or her inability to access or reproduce the public record from the website.<sup>140</sup>

**D. In addition to the above requirements, if the local agency determines that the request should be denied and the reason for the denial is not solely because of a statutory exemption, the agency must also:**

- Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;<sup>141</sup>
- Describe the information technology and physical location in which the records exist;<sup>142</sup>
- Provide suggestions for overcoming any practical basis for denying access to the records or the information sought.<sup>143</sup>

Alternatively, a local agency may forego these requirements if it instead makes available an index of the record.<sup>144</sup>

**E. Upon payment of the cost of duplication, the agency must make the records “promptly available.”<sup>145</sup>**

**F. Please note that the agency may not use this procedure to “obstruct the inspection or copying” of public records.<sup>146</sup> This provision previously read “delay access for the purposes of**

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<sup>138</sup> Gov’t Code § 6253.9(b).

<sup>139</sup> Gov’t Code § 6253(a).

<sup>140</sup> Gov’t Code § 6253(f).

<sup>141</sup> Gov’t Code § 6253.1(a)(1).

<sup>142</sup> Gov’t Code § 6253.1(a)(2).

<sup>143</sup> Gov’t Code § 6253.1(a)(3).

<sup>144</sup> Gov’t Code § 6253.1(d)(3).

<sup>145</sup> Gov’t Code § 6253(b).

<sup>146</sup> Gov’t Code § 6253(d).

**inspecting.” The newer language appears to create slightly more flexibility for local agencies as a delay may naturally result from following the required procedures.<sup>147</sup>**

- G. The local agency may provide guidelines for “faster, more efficient, or greater” access to records than provided by the Act.**

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<sup>147</sup> Gov’t Code § 6253(e).

## **XI. WHAT ARE THE PENALTIES FOR FAILURE TO COMPLY WITH THE PUBLIC RECORDS ACT?**

Unlike other open government laws, the Public Records Act does not criminally penalize a local agency for its failure to comply with the Act. Nor does it subject a local agency to money damages for a violation.<sup>148</sup> However, if a person requesting public records believes records have been improperly withheld, he or she may ask a court to compel a local agency to disclose the records.<sup>149</sup> Any person who prevails in enforcing his or her rights under the Act in court is entitled to receive court costs and reasonable attorney fees.<sup>150</sup>

Courts have deemed a person to be the “prevailing party” for purposes of awarding costs and fees if filing of the lawsuit motivated the local agency to produce any documents.<sup>151</sup> The production of just one document can be sufficient to trigger an award of costs and fees.<sup>152</sup> In the past, where the court determined the litigation was not what ultimately motivated the release of records, costs and fees were denied.<sup>153</sup> One court held that an award of attorney’s fees was appropriate even though no additional records were produced as a result of the lawsuit.<sup>154</sup> The local agency in that case had repeatedly refused to accept a requester’s oral request to inspect public records and forced the requester to make her request in writing, constituting a general denial of access to all public records and justifying an award of attorney’s fees under the circumstances.

## **XII. CONCLUSION**

This Handbook provides a brief overview of some of the most important provisions of the Public Records Act that frequently arise for local government agencies. There are, however, many other provisions not covered by the scope of this Handbook. Additionally, each factual situation contains nuances specific to the particular situation that may impact the analysis. Because it is important to comply with the Public Records Act within a relatively short time frame, it is critical to seek the advice of counsel if there is any question as to the appropriate course of action.

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<sup>148</sup> *County of Santa Clara v. Superior Court (Naymark)*, 171 Cal. App. 4th 119, 130 (6 Dist. 2009).

<sup>149</sup> Gov’t Code § 6258.

<sup>150</sup> Gov’t Code § 6259(d).

<sup>151</sup> *Los Angeles Times v. Alameda Corridor Transportation Authority*, 88 Cal. App. 4th 1381, 1391 (2 Dist. 2001); *Rogers v. Superior Court*, 19 Cal App. 4th 469, 482 (2 Dist. 1993); *Nat’l Conference of Black Mayors v. Chico Cmty. Publ’g, Inc.*, 25 Cal. App. 5th 570 (3 Dist. 2018) (newspaper that fought third party effort to prevent disclosure of public records sought by the newspaper was not entitled to attorney’s fees under the Public Records Act because newspaper did not bring an action against the City to compel disclosure under the Act).

<sup>152</sup> *Los Angeles Times*, 88 Cal. App. 4th at 1392.

<sup>153</sup> *Id.* at 1391; *Crews v. Willows Unified School District*, 217 Cal. App. 4th 1368, 1381-82 (3 Dist. 2013).

<sup>154</sup> *Galbiso v. Orosi Public Utility District*, 167 Cal. App. 4th 1063, 1086-1089 (5 Dist. 2008).

# **PART TWO.**

## **ELECTRONIC RECORDS**

## ELECTRONIC RECORDS

Advances in computer technology have significantly altered the method of communication with and between public officials and employees, but technological developments have outpaced the legislation. Email, electronic documents created on word processors, and web pages do not readily fit into the categories of disclosure under decades-old laws.

The courts have had to fit the round peg of electronic documents into the square hole of state law on several occasions. In *Aguimatang v. California State Lottery*, the Court of Appeal rejected a defendant's argument that the plaintiff's computer records "were not made at or near the time of the event" and therefore did not qualify as an admissible "writing" under the evidentiary rules for business records.<sup>155</sup> The records were recorded on magnetic tape on the day the events of the case took place, but were not printed out until twenty-two months later. The court concluded that the magnetic tape, not just the printout, constituted a "writing" under the Evidence Code:

Chanquin cites no authority holding that the retrieval, rather than the entry, of computer data must be made at or near the time of the event. Thus, although to qualify as a business record the "writing" must be made at or near the time of the event, "writing" is not limited to the commonly understood forms of writing but is defined very broadly to include all "means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof." Evid. Code § 250. Here, the "writing" is the magnetic tape. The data entries on the magnetic tapes are made contemporaneously with the Lotto transactions, hence qualify as business records. The computer printout does not violate the best evidence rule, because a computer printout is considered an "original." Evid. Code § 255.<sup>156</sup>

Similarly, in *People v. Martinez*, the California Supreme Court held that records from a state computer system of a defendant's prior criminal convictions were admissible as "official records" under the Evidence Code.<sup>157</sup>

In an attempt to catch up, in 2002 the Legislature enacted Assembly Bill 1962, modifying the definition of "writing" under the Public Records Act and the Evidence Code to include "photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any

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<sup>155</sup> *Aguimatang v. California State Lottery*, 234 Cal. App. 3d 769 (3 Dist. 1991).

<sup>156</sup> *Id.* at 798.

<sup>157</sup> *People v. Martinez*, 22 Cal. 4th 106 (2000).

tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof,” and clarified that the definition applied “regardless of the manner in which the record has been stored.”<sup>158</sup>

The legislative reports cited to *Aquimatang* and *Martinez* to establish that the amendment was declaratory of existing law. The reports also observed that in an earlier case, a court of appeal stated that the definition of writing in the Public Records Act was “intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed.”<sup>159</sup> Under the 2002 legislation, emails and other electronic documents are records subject to disclosure and present their own unique issues for local governments.

In 2009, the State Legislature enacted rules relating to the discovery of electronically stored information, similar to the rules enacted by the Federal Government in 2006. In 2006, the Federal Rules of Civil Procedure were revised to require parties in federal lawsuits to address the production and preservation of electronic records.<sup>160</sup> Under the 2006 Rules, a public entity should have an electronic retention practice and policy that ensures that electronic documents relevant to federal litigation are appropriately preserved. Rule 37 of the Federal Rules of Civil Procedure authorizes federal courts to impose sanctions on parties and their attorneys who fail to comply with discovery obligations and court orders.

City websites, in turn, raise questions about public rights of access. Websites are an important means of providing residents with access to information. An improperly framed policy on website use, however, could result in violations of the Brown Act, infringe upon residents' First Amendment rights, and even violate disability access laws. Consequently, it is important to establish clear policies governing website design and use.

This Part 2 on Electronic Records will begin by discussing the types of email that are public records, and what exemptions under the Public Records Act might justify nondisclosure. Other unique issues raised by the use of email are also explored, such as emails sent or received by public officials and employees on nongovernmental accounts, email threads and the potential risk of using email to create an unlawful serial meeting under the Brown Act. We then look at the Public Records Act requirements for disclosure of other types of electronic records, including Geographic Information Systems.

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<sup>158</sup> Stats. 2002, c. 945 (A.B. 1962—Hollingsworth) (amending Gov't Code § 6252 and Evid. Code § 250).

<sup>159</sup> Assembly Committee on Judiciary, Report on AB 1962, May 14, 2002 (citing *San Gabriel Tribune v. Superior Court*, 143 Cal. App. 3d 762, 774 (1 Dist. 1983)).

<sup>160</sup> Fed. R. Civ. P. 26.

The discussion then turns to other concerns raised by electronic records, including litigation discovery and metadata. We close with a discussion of city websites, including some of the legal issues that a public entity should consider when establishing and running a website.

## **I. EMAIL**

Given that email can be a public record under Government Code Section 6252, in most circumstances a public entity is under an obligation to disclose email upon request. However, there are a number of complications, and despite AB 1962's attempt to respond to the changed method of communication, the bill provided nothing in the way of specifics.

### **A. Is the Email a Public Record?**

Under the Public Records Act, certain exemptions might apply to justify withholding an email. But a fundamental question – one that must be considered before determining whether an exemption applies – is whether the document qualifies as a “public record” of the local agency.

#### **(1) Personal Messages**

Documents disclosable under the Public Records Act must be “prepared, owned, used, or retained by any state or local agency,” and must contain information “relating to the conduct of the public’s business.”<sup>161</sup> Although this covers a very broad range of documents, it does not cover every document.

For example, emails on entirely personal subjects unrelated to local agency business would not relate to the conduct of the public’s business, and therefore would not constitute “public records” under Section 6252.<sup>162</sup> A harder determination is whether a personal email that only mentions a city issue in passing would relate to the conduct of the public’s business. Recently the California Supreme Court held the determination whether a particular email qualifies as a public record, particularly for emails kept in personal accounts, will involve the consideration of a number of factors and may not always be clear.<sup>163</sup> The court suggested examining the content and context of the email, the purpose for which it was written and to whom, and whether the email was prepared by an employee purporting to act within the scope of his or her employment.<sup>164</sup>

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<sup>161</sup> Gov’t Code § 6252.

<sup>162</sup> *City of San Jose v. Superior Court*, 2 Cal. 5th 608 (2017).

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

## **(2) Emails Sent or Received Using Personal Devices and Personal Accounts**

Staff frequently asks whether emails sent or received on a nongovernmental account (such as personal Gmail, Yahoo Mail, or Hotmail accounts), from a home computer or smartphone and which pertain to local agency business, qualify as a public record. The California Supreme Court recently decided this very issue, and held in a unanimous decision that the presumptive right of access of the PRA extends to emails and texts sent or received on nongovernmental accounts, whether on private or government-issued devices, used by local agency employees or officials that relate to the business of that local agency.<sup>165</sup>

In *City of San Jose v. Superior Court*, a request for 32 categories of public records was filed with the City of San Jose, four of those categories included emails and text messages sent or received on private electronic devices used by the mayor, two City council members, and their staffs.<sup>166</sup> The City argued such emails were outside the reach of the PRA; both because the emails were not directly accessible to the City and thus did not qualify as writings “prepared, owned, used or retained” by the City under the Section 6252 definition of “public records,” and because neither employees or officials are included within the governmental entities listed in the definition of “local agency,” also found under Section 6252.<sup>167</sup> The Court found neither argument persuasive when considering the legislative intent of the PRA and the constitutional directive to a broadly construed right of public access.<sup>168</sup>

The California Supreme Court found no indication “the Legislature meant to allow public officials to shield communications about official business simply by directing them through personal accounts.”<sup>169</sup> The court did acknowledge the inherent balance that must be struck between the public’s rights of access and an individual employee’s or official’s right of privacy, and sought to offer some limited guidance for how searches should be conducted for records sent or received on nongovernmental accounts that pertain to the public’s business.<sup>170</sup>

Foremost, the California Supreme Court stated it is the local agency itself that is in the best position to adopt policies that will reduce the likelihood of public records being held in the private, nongovernmental accounts of local agency

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<sup>165</sup> *Id.* at 629.

<sup>166</sup> *Id.* at 615.

<sup>167</sup> *Id.* at 619-23.

<sup>168</sup> *Id.* at 621.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 627-29.

employees or officials that pertain to the public's business.<sup>171</sup> Barring such a policy, the court stated that a local agency's first step upon receiving a PRA request that implicates nongovernmental accounts should be to communicate the request to the individual or individuals in question.<sup>172</sup> A local agency may then reasonably rely on those individuals "to search *their own* personal files, accounts and devices for responsive material."<sup>173</sup> Citing both federal precedent under FOIA and a holding by the Washington Supreme Court under its state public records law, the California Supreme Court also discussed an employee or official submitting an affidavit that would give the local agency, requester, and ultimately the trial court reassurance that responsive records were appropriately searched on nongovernmental accounts.<sup>174</sup> Such an approach must also strike "an appropriate balance" with the individual's right of privacy in their personal affairs.<sup>175</sup>

The California Supreme Court's ruling in *City of San Jose v. Superior Court* is likely to have far-reaching consequences for public agencies; however, a number of questions remain unanswered by the court's decision. Since the City of San Jose refused to produce any emails from a nongovernmental account in response to the original PRA request, disputes over the content of specific emails and whether or not they fall under the definition of "public record" will likely be decided in subsequent proceedings.<sup>176</sup> Similarly, the decision does not address at what point a suggested search in response to a PRA request would become an unwarranted invasion on the privacy of a local agency employee or official.<sup>177</sup> In responding to requests for communications sent or received on an individual's nongovernmental account, it is advisable to consult with your legal counsel. Counsel should also be consulted if an agency requires access to potentially responsive documents or communications that are on an employee's private device and not accessible to the agency (for example, documents saved on an employee's home computer hard drive). Our office is also available to help draft policies that seek to reduce the likelihood that public records will be held in an agency employee's or official's private nongovernmental account, how to conduct searches into nongovernmental accounts when necessary, and how to work with employees so the employees properly search their private, nongovernmental computers and smartphones, when necessary.<sup>178</sup>

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<sup>171</sup> *Id.* at 628.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.* at 618.

<sup>177</sup> *Id.* at 627.

<sup>178</sup> Private, nongovernmental devices should never be seized by the agency, or accessed without the employee's consent, even if the agency believes the device contains material responsive to a PRA request.

## **B. Some Email may be Protected by the Deliberative Process Privilege or Mental Process Principle**

Emails differ from traditional printed documents: they may be prepared quickly and sent without proofreading, they may be conversational, or they may substitute for face-to-face or telephone communications. As recently described by the California Supreme Court, “the ease and immediacy of electronic communication has encouraged a commonplace tendency to share fleeting thoughts and random bits of information, with varying degrees of import, often to broad audiences.”<sup>179</sup> As a result, they often reflect preliminary ideas and concepts, and may be subject to the deliberative process privilege, which was mentioned earlier in the discussion on the Public Records Act.<sup>180</sup> Alternatively, the mental process principle may provide a basis for withholding emails. Before applying the deliberative process privilege to emails sent to a legislative body member, you should familiarize yourself with the Brown Act requirements regarding disclosure, discussed below in Section G.

The deliberative process privilege and the mental process principle are very similar, and sometimes courts blur the distinction. Generally speaking, the deliberative process privilege is targeted at protecting from disclosure the decision making process of governmental agencies. Without that protection, candid discussion may be discouraged within an agency, thus undermining its ability to perform its functions.<sup>181</sup> It is sometimes referred to as the “executive privilege,”<sup>182</sup> but has been applied to records of both the executive branch (e.g., the governor) and the legislative branch (e.g., a City council).<sup>183</sup> The mental process principle, on the other hand, appears to apply only to the members of an agency’s legislative body when those members are enacting legislation, and protects from disclosure those records that would allow an inquiry into the “subjective motives or mental processes of legislators.”<sup>184</sup> The deliberative process privilege uses a balancing test, whereas the mental process principle does not, making the mental process principle exemption less subjective.<sup>185</sup>

### **(1) Deliberative Process Privilege**

Although the Public Records Act does not expressly contain a deliberative process exemption, the California Supreme Court held in 1991 that public

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<sup>179</sup> *Id.* at 618.

<sup>180</sup> See pages 21-24 of this Handbook.

<sup>181</sup> *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1342 (1991).

<sup>182</sup> *Sutter's Place v. Superior Court*, 161 Cal. App. 4th 1370, 1378 (6 Dist. 2008).

<sup>183</sup> *Times Mirror Co.*, 53 Cal. 3d 1325 (governor's calendars and schedule); *Rogers v. Superior Court*, 19 Cal. App. 4th 469 (2 Dist. 1993) (City council phone records).

<sup>184</sup> *Sutter's Place*, 161 Cal. App. 4th at 1377.

<sup>185</sup> *Id.*

records may be withheld on deliberative process grounds.<sup>186</sup> The deliberative process privilege arises under the “catch-all” exemption contained in Section 6255 of the Government Code. Under the “catch-all” exemption, a public agency may justify nondisclosure by showing “that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” To apply the deliberative process privilege:

- First, consider whether the record falls within the scope of the privilege. Generally, records that are predecisional and deliberative (opinion) fall within the scope, but some courts have not strictly applied a predecisional requirement and have permitted purely factual material that exposes the deliberative process to fall within the privilege.<sup>187</sup>
- Second, identify the public interest served by nondisclosure of the record. Four public interests that have been identified by the courts are:
  - (1) Protection of the agency's decisionmaking process so that candid discussion within the agency is not discouraged;<sup>188</sup>
  - (2) Protection of certain limited communications with members of the public to ensure that the local agency receives the information it needs to make decisions and otherwise function;<sup>189</sup>
  - (3) Protection against confusion caused by premature exposure of the public to internal agency discussions before a policy is finalized;<sup>190</sup>
  - (4) Protection of the integrity of the decision-making process itself by confirming that “officials should be judged by what they decided, not for matters they considered before making up their minds.”<sup>191</sup>
- Third, identify the public interest served by disclosure of the record. Courts have emphasized that a primary benefit of disclosing a local

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<sup>186</sup> *Times Mirror Co.*, 53 Cal. 3d 1325.

<sup>187</sup> *Rogers*, 19 Cal. App. 4th at 479 (rejecting a predecisional requirement and withholding from disclosure pure facts, that is, telephone numbers called by staff and City council members).

<sup>188</sup> *Times Mirror Co.*, 53 Cal. 3d at 1343.

<sup>189</sup> *Id.* at 1344 (disclosure of Governor's schedule and appointment calendar would “chill the flow of information” to the Governor and inhibit the free exchange of ideas in private meetings).

<sup>190</sup> *California First Amendment Coalition v. Superior Court*, 67 Cal. App. 4th 159, 170 (3 Dist. 1998).

<sup>191</sup> *Id.* (internal quotations and citations omitted).

agency's records to the public is to promote government accountability. The public and the media have a legitimate need to know whether government officials are performing their duties in a responsible and diligent manner.<sup>192</sup> "Such access permits checks against the arbitrary exercise of official power and secrecy in the political process."<sup>193</sup>

- Fourth, balance the two, and withhold the record from disclosure only if the identified public interest justifying nondisclosure "clearly outweighs" the public interest justifying disclosure. In balancing the scales, the weight of an identified public interest in disclosure is "proportionate to the gravity of the governmental tasks sought to be illuminated and the directness with which the disclosure will serve to illuminate."<sup>194</sup> Because the public interest in nondisclosure must "clearly outweigh" the public interest in disclosure, if the interests are just about equal, the scales tip in favor of disclosure.

In *California First Amendment Coalition v. Superior Court (Wilson)*, the plaintiffs sought disclosure of records containing the names and qualifications of applicants for a temporary appointment to a local board of supervisors.<sup>195</sup> The Governor's office looked extensively into the applicants' backgrounds to determine whether they were qualified for the position. The court upheld nondisclosure of the records under the deliberative process privilege. It reasoned that if the deliberative process privilege did not apply, the Governor would never be able to perform background checks, which is an essential part of selecting an applicant for a government position.<sup>196</sup> In balancing the interests, the court concluded that the public's interest in disclosure of background information revealed in confidence by unsuccessful applicants was not significant and that the public interest in learning about the successful applicant's background would be satisfied after the appointment.<sup>197</sup>

The *First Amendment Coalition* case shows that the deliberative process privilege can apply to communications where the public interest in disclosure of deliberations prior to a decision is not significant and the outcome of those deliberations is a matter of public knowledge. For instance, the public could ultimately learn a council member's views about an item the City council is deliberating by attending the public meeting on the item. In such a case,

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<sup>192</sup> *Times Mirror Co.*, 53 Cal. 3d at 1345.

<sup>193</sup> *CBS v. Block*, 42 Cal. 3d 646, 651 (1986).

<sup>194</sup> *Citizens for a Better Environment v. Department of Food & Agriculture*, 171 Cal. App. 3d 704, 715 (3 Dist. 1985).

<sup>195</sup> *California First Amendment Coalition*, 67 Cal. App. 4th at 159.

<sup>196</sup> *Id.* at 171-72 (quoting *Times Mirror Co.*, 53 Cal. 3d 1325, 1345).

<sup>197</sup> *Id.* at 173-74.

emails discussing preliminary ideas and concepts about the item may be subject to the deliberative process privilege.

Another example is provided by *Times Mirror Co. v. Superior Court*.<sup>198</sup> In that case, the Los Angeles Times sought copies of the governor's appointment calendars and argued that "in a democratic society, the public is entitled to know how [the Governor] performs his duties . . . ." <sup>199</sup> Disclosure of who the Governor meets with reveals who is influencing his decisions. The Governor argued disclosure of his calendar would reveal his deliberative process, and could discourage certain people from meeting with him. In balancing these interests, the California Supreme Court concluded that nondisclosure was justified, reasoning that "if the public and the Governor were entitled to precisely the same information, neither would likely receive it."<sup>200</sup> The court added that the "massive weight" of the request (five years' worth of calendars), outweighed whatever merit there was in favor of disclosure. The court noted, however, that there may be circumstances under which the public interest in specific information is more compelling, and such a specific, focused request might tip the scales in favor of disclosure.<sup>201</sup>

Courts have emphasized the need for evidence in order to satisfy the local agency's burden of proof. In *Citizens for Open Government v. City of Lodi*, the City of Lodi withheld from the administrative record emails between City staff and the City's consultants regarding preparation of a revised EIR.<sup>202</sup> Citizen groups sued, challenging in part the administrative record. Lodi argued the emails were exempt from disclosure pursuant to the deliberative process privilege because disclosure would hamper "candid dialogue and a testing and challenging of the approaches taken."<sup>203</sup>

The Court of Appeal disagreed, finding that Lodi had failed to establish the conditions for creating the privilege. Lodi had done nothing more than cite the policy behind the deliberative process privilege without explaining why the facts in this particular case justified invocation of the privilege. However, because the Court of Appeal was deciding the case under the California Environmental Quality Act ("CEQA"), and not the Public Records Act, the Court found there was no prejudice and refused to reverse the lower court's ruling.

In comparison, the public entity in *Humane Society of the United States v. Superior Court*, provided detailed declarations from employees and experts

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<sup>198</sup> *Times Mirror Co.*, 53 Cal. 3d at 1344.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* at 1345.

<sup>201</sup> *Id.* at 1345-1346.

<sup>202</sup> *Citizens for Open Government v. City of Lodi*, 205 Cal. App. 4th 296 (3 Dist. 2012) ("Lodi").

<sup>203</sup> *Id.* at 307.

explaining why disclosing certain research documents would harm the research process.<sup>204</sup> The Humane Society sought disclosure of certain records and communications related to the preparation of a study by the University of California involving housing of egg-laying hens, and the University claimed various privileges including deliberative process.

The detailed declarations of the research project director submitted by the University seemed to sway the court; the court quoted them at length in the decision.<sup>205</sup> One declaration explained how researchers at the University tried new ideas and approaches, frequently brainstorming by email, using shorthand expressions of incomplete thoughts. To be efficient, the researchers did not keep detailed records of how they communicated, and some lines of inquiry that began in email were further discussed and dismissed as part of hallway conversations. Because of that, much of what they said in emails would be easily misinterpreted. Additionally, mistakes along the way are part of the research process. The quality and quantity of work would be stifled if researchers were aware that their informal communications would be made available broadly. While the Humane Society tried to characterize the declaration as mere speculation, the court credited the declarant as an expert in the field, giving the declaration great weight.<sup>206</sup> In balancing the public interests, the court concluded that disclosure of the emails “would fundamentally impair the academic research process.”

Given the pervasiveness of email today, the deliberative process privilege seems well-suited to protect predecisional email communications from disclosure. Nevertheless, California courts have approved the use of the deliberative process privilege sparingly, and require local agencies to provide particularized factual evidence in support of its use. Prior to invoking this privilege, it is advisable to consult your legal counsel.

## **(2) Mental Process Principle**

The Public Records Act exempts from disclosure those records that are exempted or prohibited from disclosure pursuant to federal or state law.<sup>207</sup> Under California state common law, a court is prohibited from inquiring into the motives or subjective mental processes of legislators in enacting a particular piece of legislation except as those motives may be disclosed on the face of the legislative acts, or inferred from their operation.<sup>208</sup> This “mental process

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<sup>204</sup> *Humane Society of the United States v. Superior Court (Regents of the University of California, real parties in interest)*, 214 Cal. App. 4th 1233 (3 Dist. 2013).

<sup>205</sup> *Id.* at 1241-1244.

<sup>206</sup> *Id.* at 1258.

<sup>207</sup> Gov't Code § 6254(k).

<sup>208</sup> *Sutter's Place*, 161 Cal. App. 4th at 1375.

principle" permits a local agency to withhold public records that would reveal the mental processes or subjective motives of its legislative body members when they are acting in a legislative capacity. Unlike the deliberative process privilege, which relies on a balancing test,<sup>209</sup> records reflecting the "mental processes" of legislators are not subject to a balancing test.<sup>210</sup>

Under applicable circumstances, the mental process principle may be used to justify nondisclosure of emails of legislative body members, such as City council members. For example, emails sent or received by a City council member could arguably be withheld under the mental process principle when they: (1) discuss the reason the member voted for or against a particular ordinance, (2) involve the gathering of information on which the member based their legislative decision, or (3) expose the motives for the member's vote on a legislative matter.

### **C. Exception for Notes, Drafts and Interagency/Intra-agency Memoranda**

The deliberative process privilege may help a local agency keep sensitive emails from public disclosure, but a far more effective tool is to simply have a policy in place to regularly purge intra-agency or interagency emails that are not subject to the local agency's records retention schedule. Under the Public Records Act, "[p]reliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business" are not subject to disclosure.<sup>211</sup> A written policy of deleting emails more than 120 days old (or some similar duration) would help establish that emails are not retained "in the ordinary course of business." A software modification that automatically deletes older emails would ensure that they are not retained, provided staff is notified of the pending purge and takes steps to retain those emails that, based on their content, must be retained under the local agency's records retention schedule.

There are a few caveats, however. First, note that deleting an email is not the end of the story. Popular email programs such as Microsoft Outlook have "deleted items" folders that retain messages for a time after "deletion," in order to give the user an opportunity to "undo" an accidental deletion. If a local agency received a request for an email that had been deleted, but was still on the computer in the "deleted items" folder, it technically would still be in the possession of the agency and may be subject to disclosure. To eliminate this

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<sup>209</sup> Gov't Code § 6255.

<sup>210</sup> See *Times Mirror Co.*, 53 Cal. 3d at 1339 fn.9-10 (noting that these records are exempt under the mental process principle through operation of Section 6254(k)).

<sup>211</sup> Gov't Code § 6254(a). For a discussion on the conditions that must be met to utilize Section 6254(a), see pages 11-12 of this Handbook.

potential issue from arising, an agency must ensure that the deletion becomes final and irreversible. If the agency desires or is required to save a copy of certain emails, then it should print and file such emails, or store them electronically in a location that is not subject to automatic purging.

Second, note that the Section 6254(a) exemption is not absolute. The full text of the exemption provides that drafts, notes, and inter/intra-agency memoranda are nondisclosable “provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.” Accordingly, even emails “that are not retained by the public agency in the ordinary course of business” may be subject to disclosure, if the records were not deleted prior to receipt of the Public Records Act request, and a reviewing court concludes that the public interest in disclosure is not “clearly outweighed” by the interest in nondisclosure. This is a significant hurdle for a public agency to overcome.

#### **D. Additional Exemptions that may be Applicable to Email**

In addition to those described above, there are a number of other exemptions that may be applicable to emails exchanged between employees or officials of a public agency. For example, emails to and from legal counsel may be protected by the evidentiary privileges recognized under Section 6254(k); certain personal financial data may be exempt under Section 6254(n); and personnel and medical files may be withheld under Section 6254(c). The same care should be used in reviewing responsive emails as any other material that may be subject to disclosure, and Part One, Section IX (What Public Records are Exempt from Disclosure under the Public Records Act?) of this Handbook should be consulted for additional information.

## E. The Problem with Threads

Emails elicit a response. The response typically elicits another response. If multiple people received the message, responses from all of the recipients are common. And, in all of those responses, the original message is typically quoted, either in part or in full, generating a “thread” of messages. The question necessarily arises, when there is a thread of 20 messages, and one of them is responsive to a public records request, must the other 19 messages also be produced? For example, a resident makes a request for all emails discussing the possible construction of a new library and locates the following thread:

Only the oldest two messages (sent at 12:00 and 12:05) refer to the study session on the library construction. The rest of the messages are on a different topic, a topic that may be politically sensitive. Nevertheless, all of the responses to the original message included a copy of the original message and every message that followed it, and so they all contain a reference to the library construction. As a result, it would be difficult to argue that only the 12:00 and 12:05 messages should be disclosed if this is the only copy of the email available.

On the other hand, if an earlier version of the email containing only the oldest two messages is available, a local agency could argue that the thread containing all five messages may be withheld. So long as the earlier version of the two responsive emails is disclosed, the email discussing employee compensation is only a duplicate of the oldest two messages. The subsequent messages are not responsive to the request. The Public Records Act does not require disclosure of all duplicates of a responsive record. Keep in mind, however, two important considerations. First, while one appellate court has ruled that non-responsive information may be redacted from emails exchanged between two agency employees, if challenged in court, a public agency will

### Original Message

From: City Clerk  
To: Joe Employee, Jane Employee, City Manager  
Date: April 2, 2007 12:15 p.m.  
Subject: RE: Question

More money and lots more money.

### Original Message

From: City Manager  
To: Joe Employee, Jane Employee, City Clerk  
Date: April 2, 2007 12:10 p.m.  
Subject: RE: Question

I didn't know we were discussing compensation. What are the proposals?

### Original Message

From: City Clerk  
To: Joe Employee, Jane Employee, City Manager  
Date: April 2, 2007 12:05 p.m.  
Subject: RE: Question

I think the study session on the new library is next month. It will be at the same meeting as we discuss council compensation.

### Original Message

From: Joe Employee  
To: Jane Employee, City Clerk, City Manager  
Date: April 2, 2007 12:00 p.m.  
Subject: Question

Do you know when the Council is going to have a study session on possibly constructing a new library?

have to explain in detail the information that was redacted.<sup>212</sup> Second, in litigation, a different standard may apply and all versions of the email may have to be disclosed.

One way to avoid the problem is to configure email so previous messages are not quoted in replies sent by staff. Under the example above, if the local agency did not allow quoted messages in replies, the first two messages mentioning the library construction would be disclosed as “stand-alone” emails, but the later messages regarding compensation would not because they would no longer be integrated into the prior emails. Accordingly, a city should balance its concern in avoiding unwanted disclosures against the usefulness of having an entire thread available, and may wish to consider configuring email programs to eliminate quoting emails in replies.

## **F. Risk of Serial Meetings**

Beyond the Public Records Act concerns, the use of email presents a significant opportunity for “serial meetings” prohibited by the Brown Act. A serial meeting is a series of meetings or communications not held at a noticed, public meeting in which ideas are exchanged among a majority of a legislative body directly or through intermediaries to “discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”<sup>213</sup> In the past, the Brown Act specifically forbade the use of technological devices to conduct those communications. In interpreting the prior version of this Brown Act provision, the California Attorney General opined that email is one of these “technological devices.”<sup>214</sup> The Brown Act provisions regarding serial meetings was amended effective January 1, 2009, and the phrase “technological devices” was removed when the provision was revised. It is unlikely that the legislature, in omitting the phrase “technological devices,” intended to exclude email.

The primary mechanism for creating serial meetings via email is through the use of “reply all.” For example, if a public employee sends an email to an entire City council, and then one of those council members’ replies to the entire list of recipients, then a communication would have taken place between a majority of the City council. If the purpose of the council member’s reply was to “discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body,” the communication would constitute a serial meeting in violation of the Brown Act.<sup>215</sup> Accordingly, public officials must endeavor to use “reply all” sparingly, if at all. A “reply all” congratulating a

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<sup>212</sup> *American Civil Liberties Union of Northern California v. Superior Court*, 202 Cal. App. 4th 55, 78-87 (1 Dist. 2011).

<sup>213</sup> Gov’t Code § 54952.2(b)(1).

<sup>214</sup> 84 Ops. Cal. Att’y Gen. 30 (2001).

<sup>215</sup> Gov’t Code § 54952.2(b)(1).

council member for receiving an award would be permissible; a “reply all” expressing an opinion about an issue within the subject matter jurisdiction of the City council would not.

### **G. Disclosure Requirements for Documents at Meetings**

Although the deliberative process privilege may apply to many emails, note that even that privilege is unlikely to apply if an email concerns an issue under consideration by a legislative body and a majority of the body receive the email. The Brown Act states that notwithstanding the “catch-all” exception in the Public Records Act, “or any other law,” any writings distributed to a majority of a legislative body in connection with a matter subject to discussion or consideration at an open meeting of the body are disclosable.<sup>216</sup> The statute goes on to clarify that it does not overrule the exceptions for drafts, documents related to pending litigation, personnel files, medical files, and a number of other exceptions, but it does expressly overrule the “catch-all” provision on which the deliberative process privilege is based. Note that Section 6254(k), under which the mental process principle is applied, is not overruled by the Brown Act, and still would be applicable.

Unlike records disclosable under the Public Records Act, which gives public entities ten days to respond to a request and additional time to produce the documents, a public agency must produce documents under this section of the Brown Act “without delay.”<sup>217</sup> In addition, if the email is created by the public agency or a member of the legislative body, it must be made available for inspection *at the meeting*.<sup>218</sup> Emails not drafted by the public agency or its legislative body must be made available after the meeting.

This is particularly relevant to emails sent to council members on smartphones, iPads and similar devices, given that a council member could potentially send an email to other council members while a meeting is going on. Under this section of the Brown Act, an attentive member of the public could insist that they be provided a copy of that email, at the meeting, if the council member sent it to a majority of the other council members. Accordingly, members of a legislative body should consider carefully the consequences of sending an email via smartphone, iPad or other device at a public meeting prior to doing so.

The informality of emails makes them particularly prone to statements that would not be put into conventional written documents. The only certain means of

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<sup>216</sup> Gov’t Code § 54957.5.

<sup>217</sup> Gov’t Code § 54957.5(a).

<sup>218</sup> Gov’t Code § 54957.5(c).

avoiding unwanted disclosure, of course, is simply not to write the email in the first place.

## **II. DOCUMENTS CREATED USING WORD PROCESSORS, GIS AND OTHER SOFTWARE**

### **A. Disclosure Requirements**

#### **(1) Public Records Act**

Electronic records are subject to disclosure under the Public Records Act pursuant to Section 6253.9 of the Government Code. A public agency that has information constituting a public record in an electronic format must make that information available in electronic form upon request.<sup>219</sup> An agency is not required to reconstruct an electronic record if it is no longer available in that format.<sup>220</sup> An agency may inform a requester that a requested record is available in electronic format, but the agency is prohibited from adopting a policy of only making information available in electronic format.<sup>221</sup>

On the other hand, not every piece of data stored on a computer readily fits the definition of "record." Unlike word processing documents, information stored in a database or a spreadsheet, for example, may only be displayed in response to the user's entering a formula or query. For such data, there are special statutory provisions. With conventional (printed) documents, the public agency may only charge for the direct cost of duplication, not including staff time to research, retrieve or compile the records.<sup>222</sup> For electronic records, however, the agency may charge the full cost of reproducing the document, if the record is one that is produced only at otherwise regularly scheduled intervals, or the request would require data compilation, extraction, or programming to produce the record.<sup>223</sup>

Many public agencies now possess Geographic Information Systems ("GIS") that allow them to collect, manage and analyze large volumes of geographically referenced information. Whether this electronic information is a public record that is subject to disclosure has been the subject of controversy, mainly because public agencies have charged licensing fees to businesses that wanted a copy. Public agencies have argued that the monies recovered from those licensing fees are necessary to support the development and maintenance of the GIS.

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<sup>219</sup> Gov't Code § 6253.9(a).

<sup>220</sup> Gov't Code § 6253.9(c).

<sup>221</sup> Gov't Code § 6253.9(d), (e).

<sup>222</sup> Gov't Code § 6253(b).

<sup>223</sup> Gov't Code § 6253.9(b).

In 2013, the California Supreme Court disagreed with that argument. In *Sierra Club v. Superior Court*, the Court held that a GIS-formatted database is a public record that, unless otherwise exempt from disclosure, must be produced upon request and the local agency may only charge the actual cost of duplication.<sup>224</sup> The County of Orange had argued that its GIS database was not a public record. The court disagreed that Section 6254.9 excluded a GIS database from the Public Records Act's disclosure requirements, and concluded that, because the County had not claimed any exemption to justify nondisclosure, the County of Orange could only charge the direct cost of duplication for its GIS database.

Note, however, that the California Supreme Court was careful to distinguish the database from the software – the mapping system itself was exempt from disclosure under another provision in the Public Records Act.<sup>225</sup> The statute expressly exempts computer mapping systems, computer programs, and computer graphic systems, and states that nothing in the statute is intended to limit any copyright protections. Accordingly, a requester may not seek to obtain the software that creates the records, only the records themselves.<sup>226</sup>

The Public Records Act not only exempts computer software as discussed above, but also a public agency's information security record, if that record has the potential to reveal vulnerabilities or otherwise increase the possibility of an attack on that public agency's information technology system.<sup>227</sup> However, a bill signed into law in 2015, adding Section 6270.5 to the Public Records Act, requires local agencies (except local educational agencies) to create a catalog of "enterprise systems," that must be publicly available on the local agency's website by July 1, 2016. An enterprise system is defined as a "software application or computer system that collects, stores, exchanges and analyzes information" used by the local agency as a system of record, and acts either across multiple agency departments, or collects information about the public.<sup>228</sup> While Section 6270.5 requires a city to list these enterprise systems as defined, it does not require a city to disclose the information collected, stored, exchanged and analyzed by the software application or computer system if that information is otherwise exempt under the Public Records Act. Further, a number of enterprise systems may be excluded from a local agency's listed catalog, such as systems related to 911 dispatch or emergency services, information technology security systems (including firewalls and other

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<sup>224</sup> *Sierra Club v. Superior Court*, 57 Cal. 4th 157 (2013).

<sup>225</sup> Gov't Code § 6254.9 ("Computer software developed by a state or local agency is not itself a public record under this chapter.").

<sup>226</sup> *Sierra Club*, 57 Cal. 4th at 170-171; see also Gov't Code § 6254.9(b).

<sup>227</sup> Gov't Code § 6254.19.

<sup>228</sup> Gov't Code § 6270.5(c)(1).

cybersecurity systems) and infrastructure and mechanical control systems (for example, systems that manage water or sewage functions).<sup>229</sup>

## **(2) Federal Rule 26**

In 2006, revisions to Rule 26 of the Federal Rules of Civil Procedure took effect that requires parties in federal court to address the production and preservation of electronic records during the discovery phase of litigation. These rule changes do not require a local agency to alter its routine management or storage of electronic information. They do, however, illustrate the importance of having formal written rules for retention of potentially relevant records and data when litigation occurs. It is firmly established that a duty to preserve evidence arises from the moment litigation is “reasonably anticipated.”<sup>230</sup> Once the duty to issue a legal hold is triggered, the party “must suspend its routine document retention/destruction policy and put in place a ‘litigation hold’ to ensure the preservation of relevant documents.”<sup>231</sup>

Discovery is the process by which parties involved in litigation in either state or federal courts obtain information from other parties. Under Rule 26, parties in a federal lawsuit may obtain discovery regarding any matter that is relevant to a claim or defense, so long as it is not privileged. According to Rule 26(a) what can be discovered includes “documents,” “tangible things,” and “electronically stored information,” which is broadly defined as “any type of information that is stored electronically.”

The 2006 changes to Rule 26 alter discovery in four major ways:

- a. Penalties (sanctions) on parties are now limited for electronic information lost in good faith as a result of the routine operation of computer systems, such as purging or overwriting information;
- b. Parties must address electronic discovery issues at the beginning of litigation, including the form in which electronic information will be produced to the other party, the preservation of electronic information, and claims of privilege for electronic information;<sup>232</sup>
- c. Parties must produce relevant information from electronic sources that are “reasonably accessible” but may not have to produce information from older or backup systems if it imposes an undue burden or cost. The requesting party can, however, overcome a showing of undue burden or cost if they can establish “good cause” for doing so; and

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<sup>229</sup> See pages 123-124 of this Handbook.

<sup>230</sup> *Zubulake v. UBS Warburg, LLC*, 229 F.R.D. 422, 431 (S.D.N.Y. 2004).

<sup>231</sup> *Id.* at 432; accord *In re Napster Inc. Copyright Litig.*, 462 F. Supp. 2d 1060, 1070 (N.D. Cal. 2006).

<sup>232</sup> Fed. R. Civ. P. 26(f)(3)(C).

- d. Privileges are retained for documents inadvertently disclosed. Such documents may be recalled by the disclosing party. In such cases, the privilege is not waived.

The discovery rule changes do not require a local agency to alter its routine handling of electronically stored information prior to when litigation can reasonably be anticipated. The drafters of the rules recognized that electronic information might be routinely altered, purged or overwritten as part of a system's operation. Under the 2006 revisions to Rule 37(f), the routine purging of outdated electronic information, including the "alteration or overwriting of information...to meet the party's technical and business needs" continues to be permissible, so long as it is done in accordance with other laws, such as the records retention laws in Government Code Sections 34090-34090.8. These sections permit a city, for example, to destroy certain city records that are "no longer required" and are more than two years old if authorized by a City council resolution and the written consent of the City attorney. Records that may not be destroyed include: real property title records, court records, records required to be kept by statute, records less than two years old, and the minutes, ordinances, or resolutions of the legislative body, City board, or commissions.

However, once litigation can be reasonably anticipated, a local agency has a duty to preserve potentially relevant information for discovery. In some cases, the local agency may have to suspend the routine operation of its information systems in order to preserve information potentially relevant to the litigation. In such cases, it must act in good faith and not sit idly by while potentially relevant information is purged from its systems; "[t]he good faith requirement of Rule 37(f) means that a party is not permitted to exploit the routine operation of an information system to thwart discovery obligations by allowing that operation to continue in order to destroy specific stored information that it is required to preserve."<sup>233</sup>

These rules on document preservation highlight the importance of having a written document retention policy. A written policy will show what operations are routine. This will help protect a local agency from sanctions if litigation occurs and allow its attorneys to discuss its routine computer operations with the court and other parties. Such a policy should set specific limits for how long information is retained and specific procedures for the routine destruction of electronic data. The policy should also address the steps that the agency will take to preserve potentially relevant information when litigation is reasonably anticipated. These policies should be in accordance with Government Code Sections 34090-34090.8 and any other applicable laws governing the preservation of city records.

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<sup>233</sup> Fed. R. Civ. P. 37(f) Advisory Committee Note.

The other discovery rule changes further illustrate how a written policy will aid a local agency in litigation. When litigation begins in federal court, Rule 26(f) requires the parties' lawyers to confer about "issues relating to disclosure or discovery of electronically stored information." No part of electronic discovery is more important for determining the scope of the preservation obligation than the pre-scheduling conference meet and confer provided under Rule 26(f). Rule 26(f) explicitly directs the parties to discuss the form in which electronic information will be produced, how it will be preserved, and how to address claims that certain information is privileged.

The pre-scheduling conference meet and confer can be the single most important factor to reduce costs and burdens of discovery. In order for a local agency's counsel to be prepared to discuss these issues, the rules note that it is "important for counsel to become familiar with those systems before the conference." In some cases, counsel may have to identify and interview individuals with special knowledge of the agency's computer systems.

Rule 26(b) requires the parties to identify whether "reasonably accessible" electronic sources can provide all of the relevant, non-privileged, information. Parties will need to distinguish these "reasonably accessible" sources from those that are not "reasonably accessible" because of undue burden or cost. Examples of information that might not be reasonably accessible include:

- deleted items,
- fragmented or damaged data,
- information kept on some back-up tape systems for disaster recovery purposes, and
- legacy data remaining from systems no longer in use.

Under Rule 26(a), the parties must produce all of the relevant, non-privileged information from the "reasonably accessible" sources within 14 days of the initial conference during the "initial disclosure," a requirement unique to federal court where relevant information is disclosed at the outset of the civil discovery period. Discovery from sources that a party deems not "reasonably accessible" can still occur if the requesting party can show that there is no undue burden or cost or upon a showing of "good cause."

Once discovery begins in federal court a local agency must now be prepared to explain how their electronic information systems work, which systems contain information potentially relevant to the litigation, how those systems are accessed, and the costs of accessing archival or older systems. Having a written policy in place will reduce the costs and staff time associated with

complying with these discovery rules. It will also aid staff in familiarizing themselves with the operations of the agency's computer data and storage systems as well as any external storage and backup systems, and in explaining these operations to agency counsel and opposing parties. Finally, having a written policy will minimize the likelihood of destroying discoverable materials and thus dramatically reduce the chance that an agency will be hit with discovery sanctions during litigation.

Taken together, the changes to the federal discovery rules make it advisable for a local agency to put in writing its procedures for managing electronic information.

In light of these rules and obligations and as a first step to forming or maintaining an already-created written policy on electronically stored information, public agencies should review their operating systems to ensure they understand how electronic information is currently stored and retained. In addition, public agencies should examine their data recovery systems and archival data to determine the type of information contained in these systems, and to understand the costs associated with retrieving such data. Agencies should also regularly review their written policies once implemented to ensure that they remain up to date as new technologies and systems replace old ones.

### **(3) The California Civil Discovery Act Contains a Process for Electronic Discovery in State Court**

In 2009, the California Legislature adopted federal-style procedural rules to permit the discovery of electronically stored information in state court cases pursuant to Assembly Bill ("AB") 5, following the 2006 amendments to the Federal Rules of Civil Procedure.<sup>234</sup> Electronically stored information is broadly defined by AB 5<sup>235</sup> as any information that is stored in an electronic medium, and includes e-mails, documents, spreadsheets and any other information stored in computers and other electronic devices.<sup>236</sup> These rules make the creation of the above-mentioned written policy on electronically stored information just as applicable to state court litigation as federal court litigation.

Similar to the Federal Rules, a safe harbor exists for spoliation caused by "routine, good faith operation of an electronic information system."<sup>237</sup> AB 5 specifically provides that a court shall not impose sanctions on a party for failing to provide electronically stored information that has been lost, damaged, altered or

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<sup>234</sup> Assembly Bill 5, Stat. 2009, Ch. 5 (amending Code of Civ. Proc. §§ 2016.020, 2031.010 through 2031.060, and 2031.210 through 2031.320, and adding Code of Civ. Proc. §§ 1985.8 and 2031.285).

<sup>235</sup> See Code of Civ. Proc. §§ 1985.8, 2016.020, and 2031.010 et seq.

<sup>236</sup> Code of Civ. Proc. § 2016.020(e).

<sup>237</sup> Code of Civ. Proc. § 2031.320(d).

overwritten as the result of the routine, good faith operation of an electronic information system.<sup>238</sup> Accordingly, public agencies should ensure electronically stored information is retained or deleted only in accordance with the adopted policy. Agencies should thus train employees to make sure the document retention policies are appropriately followed at all times.<sup>239</sup>

Further, as with federal court litigation, once state court litigation is reasonably anticipated, public agencies have a duty to stop automatic destruction processes and preserve potentially relevant electronically stored information in the format in which it currently exists, notwithstanding the normal document retention policy that might otherwise permit destruction. In the event litigation is reasonably anticipated, public agencies should ensure that "litigation holds" are applied to electronically stored information potentially relevant to the litigation, so that it is not deleted, whether intentionally or by automatic computer processes. The retention of information that may be potentially relevant to anticipated litigation should also be a part of the agency's written policy on electronically stored information.

In light of a recent California Supreme Court decision outlining the broad scope of discovery, agencies are advised to consult legal counsel in determining the breadth of a litigation hold. Documents and information that the agency believes to be protected under a right to privacy argument should still be preserved, if even potentially relevant to the litigation. In *Williams v. Superior Court*, the Court stated that "the right to discovery in this state is a broad one, to be construed liberally so that parties may ascertain the strength of their case and at trial the truth may be determined."<sup>240</sup> The Court determined that the defendant in *Williams* was obligated to disclose the personal information of individuals who may have had no bearing on or relation to the claims asserted by the plaintiff. It further stated that the party opposing discovery has the burden of showing that a privacy right exists that outweighs the potential relevance of the information requested. The same burden applies when the party opposing discovery argues undue hardship. In both instances, the burden is a high one. Agencies should therefore be mindful that they may have to produce a broader scope and larger volume of documents and electronically stored information than was required in prior years, and accordingly should, in consultation with counsel, broaden the scope of their document retention policy and litigation holds.

When instituting a legal hold, or responding to discovery requests in litigation, attorneys and clients must work together to understand how and where

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<sup>238</sup> Code of Civ. Proc. § 2031.060(i)(1).

<sup>239</sup> Code of Civ. Proc. § 2031.060(i)(2).

<sup>240</sup> *Williams v. Superior Court*, 3 Cal. 5th 531, 537 (2017).

electronic documents, records, and emails are maintained and to determine how best to locate, review, and retain responsive documents.

## B. Metadata

Word processing documents most readily fit the definition of “record,” and they also present the greatest potential for inadvertent disclosures. A modern word processing document is comprised of far more than simple words on a page. Microsoft Word documents typically contain information about the author or editor, the author's organization, the time the document was created, modified or accessed, the amount of time spent editing the document, and even what earlier versions of the document looked like. This “metadata,” which literally means data about data, is automatically attached to documents by modern word processors. For instance, some metadata appears in Microsoft Word under the “Home” menu, by selecting “Properties.”

The screenshot shows the 'Document1 Properties' dialog box with the 'Summary' tab active. The fields are as follows:

- Title: Letter to D.S.
- Subject: (empty)
- Author: Benjamin B. Bickelbaum
- Manager: (empty)
- Company: City of Whoville
- Category: (empty)
- Keywords: (empty)
- Comments: (empty)
- Hyperlink base: (empty)
- Template: Normal
- ☐ Save preview picture

Buttons at the bottom: OK, Cancel.

Although metadata can be useful information, it can also result in unwanted disclosures. For instance, as the dialog box above shows, Microsoft Word automatically inserts the name and company of the author of the document, and there are numerous other fields that can be filled in. If a local agency does not want this sort of information disclosed as a general rule, the word processor should be configured to not record this information.

More significantly, many word processors have a “tracked changes” function. When public officials and employees work with multiple drafts of a document, especially when multiple people work on the same document, they frequently make use of a feature that highlights every change made to the document. That way, when a party to a proposed contract wants to delete a provision or insert a line, it is easy for the other party to see the change. It is simple to turn this feature on and off, but it is also simple to turn the display of tracked changes on and off, while still having the word processor keep track of the changes. As a result, it is not uncommon for documents to be transmitted electronically with changes tracked, without the knowledge of the author. If the author deleted a paragraph, the person reviewing the tracked changes could restore that paragraph. The implications become particularly significant if the author had deleted the text because it was deemed inaccurate or sensitive.

Moreover, recall that drafts are only nondisclosable if it is the public agency's policy to not retain them in the course of business. If a city routinely saves documents with changes tracked, then arguably it has preserved the earlier drafts of the document. This could thwart a city's policy to avoid preserving drafts. Consequently, it should be common practice to remove any tracking from a document upon finalization, or better yet, to not use tracking in the first place.

Similarly, most word processors have an "undo" button, which is useful for correcting typos or to recover inadvertently deleted text. Many word processors can "undo" a string of actions, and can even "undo" actions repeatedly until the document is a blank page. If a city official sends that document to someone making a public records request, the individual could click on "undo" repeatedly to see every step that the author took in drafting the document. This presents the same problems as with "tracked changes" – sensitive or inaccurate information that the author meant to delete could be included in the metadata. Accordingly, in using word processors, public agencies should ensure that they are configured to eliminate the "undo" trail when a document is saved.

In addition to all of the above strategies, there are several programs available that can remove metadata after a document has been completed, or at the time it is emailed. However, the use of such programs on documents that are subject to a public records request would be of questionable legality. Under the Public Records Act, a request for a public document must include the exact document, and on the face of it, stripping metadata from a document that is requested in electronic form potentially would violate this requirement.<sup>241</sup> Depending on your document retention schedule, you may be able to strip metadata from some older documents upon archiving them, but deleting metadata from documents that the city is required to retain may violate document retention requirements.

If the requester does not expressly ask that the document be provided in electronic format, the statute does not prohibit the agency from supplying it in printed form. Accordingly, a local agency may wish to adopt a policy of providing electronic records in printed form unless a requester expressly asks for an electronic version, and providing records in pdf format when requesters ask for electronic versions. If the requester expressly asks for the original document format, the City attorney should be consulted.

It is unclear how the new federal electronic document discovery rules would apply to metadata. Rule 26 does not specifically address metadata, but the

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<sup>241</sup> See Gov't Code § 6253 (b) ("Upon request, an exact copy shall be provided unless impracticable to do so."); *Rosenthal v. Hansen*, 34 Cal. App. 3d 754 (3 Dist. 1973).

comment to the revision mentions metadata and states that “[w]hether this information should be produced may be among the topics discussed in the Rule 26(f) conference.” Consequently, there is the potential for the disclosure of metadata in litigation, which further highlights the importance of establishing standard practices for creating and handling metadata. During litigation, it is often advisable to maintain sources of electronically stored information in native formats with metadata, to preserve the ability to produce the data if necessary.

### **III. CITY WEBSITES**

With the rapid integration of the internet into American culture, a significant percentage of California cities now provide at least basic information about their government on city-run websites. Posting certain commonly requested information on a web page is a way to reduce the staff time necessary to respond to public records requests. City websites also provide a method to increase public participation in local government, such as more recent requirements for posting of public meeting agendas electronically. However, city website practices may have legal ramifications, and it is advisable for a city to draft and implement a policy on the permitted uses of its website to avoid violating legal restrictions such as those related to mass mailings and use of public funds for “express advocacy,” and also to avoid creating a “public forum”.

#### **A. Websites and the “Mass Mailing” Prohibitions**

The Political Reform Act prohibits the sending of newsletters and other so-called “mass mailings” at public expense.<sup>242</sup> A “mass mailing” is defined as the mailing or distribution at public expense of 200 or more items within a calendar month featuring the name, office, photograph or other reference to an elected officer of the agency.<sup>243</sup> The underlying intent is to preclude elected officials from using newsletters as indirect campaign flyers for themselves.

In brief, the California Fair Political Practices Commission (the “FPPC”) Regulations provide a four-prong test to determine the legality of mass mailings. A mass mailing is prohibited if each of the following elements is present:

- a. a delivery of a tangible item,
- b. that “features” or includes reference to, an elected official,
- c. distributed at public expense regardless of the cost, or produced at public expense where the cost of production exceeds \$50.00,

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<sup>242</sup> Gov’t Code § 89001.

<sup>243</sup> 2 C.C.R. § 18901.

d. in a quantity of 200 or more.<sup>244</sup>

On the face of it, the regulation would not apply to web pages, because they would not constitute “a delivery of a tangible item.”

The FPPC, which interprets the Political Reform Act, has yet to render an official opinion on the applicability of the mass mailing rule to websites. However, several advice letters issued by the FPPC have concluded that the prohibitions on publicly funded mass mailings contained in Government Code Section 89001 and FPPC Regulation 18901 do not apply to websites or web pages.

In 1998, the FPPC responded to an inquiry as to whether a committee, advocating the passage of a bond measure expected to be placed on the ballot by a school board, may obtain a link from a “school district website to a web page” advocating the passage of the bond measure. The FPPC advised that,

According to Regulation 18901(a)(1), a publicly-funded mailing is a prohibited mass mailing if it is delivered as a tangible item to the recipient at his or her residence, place of employment or business, or post office box. Consistent with Regulation 18901, the ban is applicable to tangible items only. Since distribution over the Internet is not a distribution of a tangible item, Internet pages are not prohibited mass mailings under the [Political Reform] Act.<sup>245</sup>

Even though providing a link to an express advocacy website may not qualify as a “mass mailing,” it could violate other laws, as will be discussed below in Section B.

A second advice letter similarly concluded that web pages are not covered under the mass mailing prohibitions of the Political Reform Act. That advice letter was issued by the FPPC in 1999 in response to a request for advice by the County of Lake. The inquiry was whether the County could include on its web page photographs and a short biography for each member serving on its board of supervisors.<sup>246</sup> The FPPC letter reiterated that FPPC Regulation 18901 did not apply to the actions listed above because “web pages are not considered tangible items” and not subject to Regulation 18901(a)(1).<sup>247</sup>

In 2013, the FPPC again confirmed its conclusion that distribution of information over the Internet, including websites, is not distribution of tangible items. A City attorney requested advice whether the mass mailing provisions prohibit City staff

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<sup>244</sup> 2 C.C.R. § 18901.

<sup>245</sup> *Footte Advice Letter*, No. A-98-114, 1998 WL 289895 (1998) (citation omitted).

<sup>246</sup> *Peterson Advice Letter*, No. A-99-013, 1999 WL 100857 (1999).

<sup>247</sup> *Id.*

from listing the mayor's bed and breakfast business on the city's website along with other places of lodging in the city. The FPPC advised that the mass mailing provision does not prohibit the listing of the mayor's business on the city's website because providing information over the Internet is not distribution of a tangible item.<sup>248</sup> The FPPC also recommended a review of laws pertaining to use of public resources.<sup>249</sup>

Given the foregoing, city web pages provide a unique opportunity for elected officials to communicate with their constituents. Council members could each maintain their own page on the website, drawing attention to issues of interest to the community. There are, however, some limitations on what the web pages can contain, as discussed below.

## **B. Avoiding Express Advocacy**

Although websites and web pages are not currently covered under the mass mailing restrictions of FPPC Regulation Section 18901, public agencies must still be mindful of other regulations and laws that might be violated by its decisions to permit links from official websites. For example, the Political Reform Act prohibits the use of public moneys for election campaigns.<sup>250</sup> Consequently, a city's web page must not indicate support or approval of, or advocate for, a candidate for elective office.

The leading California case setting forth the basic rule with respect to government involvement in political campaigns is *Stanson v. Mott*.<sup>251</sup> In *Stanson*, the California Supreme Court addressed the question of whether the State Director of Beaches and Parks was authorized to expend public funds in support of certain state bond measures for the enhancement of state and local recreational facilities. The court concluded that the Director of Beaches and Parks lacked such authority and set forth the basic rule that "in the absence of clear and explicit legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign."<sup>252</sup> Only impartial "informational" communications would be permissible, such as a fair presentation of the facts in response to a citizen's request for information.<sup>253</sup>

The *Stanson* Court also recognized that the line between improper "campaign" expenditures and proper "informational" activities is not always clear. "[T]he determination of the propriety or impropriety of the expenditure depends upon

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<sup>248</sup> *Pierik Advice Letter*, No. A-13-012 (2013).

<sup>249</sup> *Id.*

<sup>250</sup> Gov't Code § 85300.

<sup>251</sup> *Stanson v. Mott*, 17 Cal. 3d 206 (1976).

<sup>252</sup> *Id.* at 209-10.

<sup>253</sup> *Id.* at 221.

a careful consideration of such factors as the style, tenor and timing of the publication; no hard and fast rule governs every case.”<sup>254</sup> The California legislature also codified the holding of *Stanson* in Government Code Section 54964.<sup>255</sup>

The *Stanson* test was recently reaffirmed by the California Supreme Court in *Vargas v. City of Salinas*.<sup>256</sup> Prior to *Vargas*, courts attempting to interpret and apply *Stanson* used varying tests to determine the permissibility of expenditures. For example, in *California Common Cause v. Duffy*, an appellate court held that a local sheriff’s use of public facilities and personnel to distribute postcards critical of then-Supreme Court Justice Rose Bird was “political” and not “informational” as permitted by *Stanson* because the cards presented only one side of Justice Bird’s fitness to be retained in office.<sup>257</sup> In another appellate decision, *Schroeder v. City Council of Irvine*, Irvine’s “Vote 2000” Program was upheld.<sup>258</sup> The program encouraged voter registration, without specifically advocating a particular position on any measure. Although the City had taken a public position in favor of the proposed ballot measure, the materials it distributed did not advocate any particular vote on the measure and rarely mentioned the measure at all. The *Schroeder* court held that the funds spent on the Vote 2000 program would be political expenditures and unlawful under *Stanson* only if the communications expressly advocated, or taken as a whole unambiguously urged, the passage or defeat of the measure.<sup>259</sup> Because the City presented a neutral position on “Measure F,” at least in the campaign materials, the court upheld the program as valid.

However, in *Vargas v. City of Salinas*, the California Supreme Court decided that “express advocacy” is an insufficient standard. In *Vargas*, proponents of a local ballot initiative to repeal the City’s utility users tax (“Measure O”) sued the City alleging improper government expenditures. The court held that even if a communication does not expressly advocate for either side of an issue, a *Stanson* analysis must nonetheless be conducted to determine whether the activity was for informational or campaigning purposes based on its style, tenor, and timing.<sup>260</sup> Although the court did not specifically refer to the *Schroeder* analysis in its opinion, the court clearly stated that the “express advocacy”

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<sup>254</sup> *Id.* at 222 (citations omitted).

<sup>255</sup> Government Code Section 54964 prohibits the expenditure of public funds “to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate, by the voters.” The statute does not prohibit expenditures to provide information to the public about the possible effects of a ballot measure on the activities, operations, or policies of the local agency, if the informational activities are not otherwise prohibited by the Constitution or state law and the information provided constitutes an accurate, fair, and impartial presentation of relevant facts to aid the voters in reaching an informed judgment regarding the ballot measure.

<sup>256</sup> *Vargas v. City of Salinas*, 46 Cal. 4th 1 (2009).

<sup>257</sup> *California Common Cause v. Duffy*, 200 Cal. App. 3d 730, 746-747 (4 Dist. 1987).

<sup>258</sup> *Schroeder v. City Council of Irvine*, 97 Cal. App. 4th 174 (4 Dist. 2002).

<sup>259</sup> *Id.* at 187-188.

<sup>260</sup> *Vargas*, 46 Cal. 4th at 1.

standard does not meaningfully address potential constitutional problems arising from the use of public funds for campaign activities that were identified in *Stanson*. Thus, local governments must look to *Vargas* rather than *Schroeder* for the proper standard to evaluate whether an expenditure is permissible.

A variety of factors led to the *Vargas* court's conclusion that the communications were informational, including the fact that the publications avoided argumentative or inflammatory rhetoric and did not urge citizens to vote in a particular manner. The challenged expenditures were made pursuant to general appropriations in the City's regular annual budget pertaining to the maintenance of the City's website, the publication of the City's regular quarterly newsletter, and the ordinary provision of information to the public regarding the City's operations. The Supreme Court found that the City engaged in informational rather than campaign activity when it posted on the City's website the minutes of City council meetings relating to the council's action along with reports prepared by various municipal departments and presented by officials at City council meetings.<sup>261</sup> Similarly, the City did not engage in campaign activity by producing a one-page document listing the program reductions that the City council voted to implement should Measure O be approved, or in making copies of the document available to the public at the City clerk's office and public libraries.<sup>262</sup> The court reasoned that viewed from the perspective of an objective observer, the document clearly constituted an informational statement that merely advised the public of specific plans that the City council voted to implement should Measure O be approved.

Finally, the court found that the City engaged in permissible informational activity by mailing to City residents the fall 2002 "City Round-Up" newsletter containing articles describing proposed reductions in City services. Although under some circumstances the mailing of material relating to a ballot measure to a large number of voters shortly before an upcoming election would constitute campaign activity, a number of factors supported the court's conclusion that the mailing of the newsletter constituted informational rather than campaign activity: it was a regular edition of the newsletter that was mailed to all City residents as a general practice, the style and tenor of the publication was entirely consistent with an ordinary municipal newsletter and readily distinguishable from traditional campaign material, and the article provided residents with important information about the tax in an objective and nonpartisan manner.

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<sup>261</sup> *Id.* at 37.

<sup>262</sup> *Id.* at 37-38 (stating, "not only [did] the document not advocate or recommend how the electorate should vote on the ballot measure, but its style and tenor [was] not at all comparable to traditional campaign material"). The fact that the City only made the document available at the City clerk's office and in public libraries to people who sought it out reinforced the document's informational nature.

The Supreme Court illustrated the insufficiency of the “express advocacy” standard by suggesting that if the City of Salinas were to post billboards throughout the City prior to an election stating, “‘IF MEASURE O IS APPROVED, SIX RECREATION CENTERS, THE MUNICIPAL POOL, AND TWO LIBRARIES WILL CLOSE,’ it would defy common sense to suggest that the City had not engaged in campaign activity even though such advertisements would not have violated the express advocacy standard.”<sup>263</sup>

*Vargas* and *Stanson* reflect that local agencies must exercise caution when communicating to voters about local measures. The same prohibitions on the use of public moneys to support or oppose a ballot measure or a candidate for political office would likely also apply to public agency websites. This is because the time and expense of maintaining a website and adding links to other websites may result in a form of “in kind” contribution from the public agency to the particular candidate or campaign committee. “Professional services, including the creation and maintenance of a website for a candidate, could conceivably result in a contribution from the county to the candidate.”<sup>264</sup>

Public officials must ensure that there is no inclusion of information or links on their websites that contain words of express advocacy or that unambiguously promote or suggest a particular position in a campaign. Public officials must also avoid any actions which, based on their “style, tenor and timing”, may lead to a determination that a city website contains impermissible advocacy. Unfortunately, there is no hard and fast rule to assist public officials in distinguishing improper partisan campaign expenditures from permissible expenditures for “informational activities.” Whether a communication is permissible will be based on a combination of these factors, and public officials should therefore seek the advice of the City attorney on a case-by-case basis. Assistance may also be obtained from the FPPC.

Note also that public officials could potentially face personal liability if a court concluded that they used public funds for a partisan campaign. The *Stanson* opinion concluded that public officials “may properly be held to a higher standard than simply the avoidance of “fraud, corruption or actual malice” in their handling of public funds.”<sup>265</sup> Instead, public officials must exercise “‘due care,’ i.e., reasonable diligence, in authorizing the expenditure of public funds, and may be subject to personal liability for improper expenditures made in the absence of such due care.”<sup>266</sup> If public officials published a web page that conveyed a partisan slant, a court could conclude that the officials failed to exercise this due care.

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<sup>263</sup> *Id.* at 32.

<sup>264</sup> *Peterson Advice Letter*, No. A-99-013, 1999 WL 100857 (1999).

<sup>265</sup> *Stanson*, 17 Cal. 3d at 226.

<sup>266</sup> *Id.* at 226-27.

### **C. Public Forum**

In addition to the mass mailing and express advocacy considerations, the existence of city websites also raises the issue of whether a website constitutes a “public forum” in which any member of the public would have a right to post information or links, or engage in debate or discourse. The decisions of public agencies on what sort of content to include on web pages, whether to allow external links to be posted, and what type of links to permit, have the potential to infringe upon rights guaranteed by the First Amendment of the United States Constitution, the California Constitution’s “Liberty of Speech Clause,” and other legal principles.

In relevant part, the First Amendment provides that, “Congress shall make no law ... abridging the freedom of speech.”<sup>267</sup> Similarly, the “Liberty of Speech Clause” provides that, “A law may not restrain or abridge liberty of speech or press.”<sup>268</sup>

The United States Supreme Court uses the “public forum” doctrine to evaluate the constitutionality of government regulation of private speech on public property. This doctrine classifies public property according to three categories of public forum status: (i) traditional public forums - areas traditionally used for expressive activity such as streets, sidewalks and parks; (ii) designated public forums - areas dedicated by the government for expressive activity, either generally or for limited purposes; and (iii) nonpublic forums.

“Public forum” status directly impacts the degree to which a public agency may regulate private expression on public property. For example, if a public agency’s website were deemed a “nonpublic forum,” then the agency would have considerable discretion in determining which applications for website links to accept. By contrast, if a public agency’s website was deemed a “traditional public forum” or a “designated public forum,” then the agency’s discretion would be substantially diminished.

Two cases addressing whether city websites constitute public forums are discussed below.

### **D. *Putnam Pit, Inc. v. City of Cookeville***

The case of *Putnam Pit, Inc. v. City of Cookeville* provides an example of how the First Amendment may limit a public agency’s authority to control external links on its website. *Putnam Pit* is a federal case discussing the validity of a

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<sup>267</sup> U.S. CONST. amend I.

<sup>268</sup> CAL. CONST. art. 1, § 2(a).

website link policy under the First Amendment.<sup>269</sup> This case involved a free speech claim by a small, free website newspaper publisher, against the City of Cookeville, Tennessee.

The case arose from Cookeville's refusal to establish a link from its website to the website of the publisher's on-line newspaper, the "*Putnam Pit*." The "*Putnam Pit*" website focused on commentary critical of the City of Cookeville and its officials and staff. At the time that the publisher initially requested and was denied the link, "several for-profit and non-profit entities were linked to the . . . [Cookeville] Website, including a local technical college, two Internet service providers, a law firm, a local computer club, a truck product manufacturer and distributor, and a site with information about Cookeville."<sup>270</sup> However, prior to the publisher's request, Cookeville "had no stated policy" on who could be linked to the City's website.<sup>271</sup> Upon learning of the publisher's request, the City manager decided to permit links only "from the Cookeville Website to other sites, which would promote the economic welfare, tourism, and industry of the City."<sup>272</sup> Pursuant to this policy, the City manager subsequently denied the publisher's request for a link from the Cookeville website to the "*Putnam Pit*" website and then removed several links to other websites from the Cookeville website.<sup>273</sup>

The Sixth Circuit Court of Appeals ruled that based on the facts presented, the City's website was a nonpublic forum under the First Amendment, and that the City could impose reasonable restrictions but could not engage in viewpoint discrimination.<sup>274</sup> The court also ruled the publisher was entitled to a trial regarding whether Cookeville discriminated against him based upon viewpoint when the City manager denied him a link on the website. Facts that could potentially constitute viewpoint discrimination included statements by the City manager that he thought the "*Putnam Pit*" consisted only of the publisher's "opinions," "which he didn't care for" and actions by the City manager who indicated to the publisher that he would not be permitted a link even if the "*Putnam Pit*" were a non-profit entity.<sup>275</sup>

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<sup>269</sup> *Putnam Pit, Inc. v. City of Cookeville*, 221 F.3d 834 (6th Cir. 2000).

<sup>270</sup> *Id.* at 841.

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> *Id.* at 843-845.

<sup>275</sup> The court further concluded that, "[t]he City's actions, some of which appear to be tied to the City's interests, and others which appear less clearly relevant to the purpose of the City's Website, lead us to REVERSE the district court's grant of summary judgment because [the publisher] has raised a material issue of fact regarding whether the City discriminated against him and his Website based upon viewpoint." *Putnam Pit, Inc.*, 221 F.3d at 846.

### **E. *Vargas v. City of Salinas***

In *Vargas v. City of Salinas*, the California Supreme Court also considered whether a city website constituted a public forum.<sup>276</sup> In *Vargas*, City residents placed an initiative on the ballot to repeal the City's long-standing utility users tax. The City staff prepared a series of reports addressing the impact the loss of the tax would have on the City's budget, including the reduction and elimination of services and programs, and posted those reports on the City's web page. The initiative supporters contended that they had a right to provide their own information on the web page, which the City rejected.

The Supreme Court concluded that the City's web page was not a public forum because the City had not opened its website to permit others to post material of their choice.<sup>277</sup>

### **F. Public Forum Analysis**

The *Putnam Pit* and *Vargas* courts applied the public forum analysis of the First Amendment to the City's action with respect to the website, treating the website as analogous to physical public property. As previously mentioned, the United States Supreme Court has established that, for such analyses, the extent of permissible government restrictions on expressive activity are governed by whether the activity occurs in (i) a traditional public forum; (ii) a designated public forum; or (iii) a nonpublic forum.<sup>278</sup>

#### **(1) Traditional public forum**

Traditional public forums are "places which by long tradition or by government fiat have been devoted to assembly and debate." Typically such places have included public streets, sidewalks and parks.<sup>279</sup> Government regulations that restrict the "content" of expressive activity in such forums "must withstand strict scrutiny."<sup>280</sup> This means that if the government wishes to restrict expressive activity based on content, such restrictions must serve a "compelling state interest" and must be "narrowly tailored" to serve that interest. However, if the government imposes content-neutral restrictions on the "time, place and manner" of expressive activity in public forums, then such restrictions must serve a "significant public interest," must be "narrowly tailored" to that interest and must leave open "alternative avenues of communication."<sup>281</sup>

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<sup>276</sup> *Vargas*, 46 Cal. 4th at 1.

<sup>277</sup> *Id.* at 37, n.18.

<sup>278</sup> *Perry Ed. Ass'n v. Perry Local Ed. Ass'n*, 460 U.S. 37 (1983).

<sup>279</sup> *Putnam Pit, Inc.*, 221 F.3d at 842 (citing *Perry*, 460 U.S. at 45).

<sup>280</sup> *Id.* at 843.

<sup>281</sup> *Id.* (citing *Perry*, 460 U.S. at 45).

## **(2) Designated public forum**

The Supreme Court has held that “[i]n a designated public forum, the government ‘intentionally opens a nontraditional public forum for public discourse.’”<sup>282</sup> An example of a designated public forum is the public comment session at a City council meeting. In a designated public forum, the government may restrict the content of the expressive activity to that which is within the scope of the public forum. For example, in the case of a City council meeting, the government may restrict speech to only permit discussion of city business.<sup>283</sup>

Once the government opens a nontraditional public forum to a class of persons, the restrictions applicable to those to whom the forum is opened must also withstand strict scrutiny. Thus, as in the case of public forums, regulations governing designated speakers in designated public forums must serve a “compelling state interest” and must be “narrowly tailored” to serve that interest.<sup>284</sup> Accordingly, it is important for a city to avoid creating a designated public forum on its website so as not to establish rights where none previously existed, or at least to have a clear policy on who may post on the city’s website.

## **(3) Nonpublic forum**

Nonpublic forums are those places that are not typically used for public debate or the free exchange of ideas. Accordingly, “the First Amendment does not forbid a viewpoint-neutral exclusion of speakers who would disrupt a nonpublic forum and hinder its effectiveness for its intended purpose.”<sup>285</sup>

Examples of nonpublic forums include highway rest areas and advertising on a municipal bus.<sup>286</sup> In a nonpublic forum government may prohibit speech or expressive activity, so long as such restrictions are reasonable in light of the government’s interest and do not attempt to suppress the speaker’s activity based on disagreement with the speaker’s views.<sup>287</sup>

## **(4) Public entity websites as nonpublic forums**

The Sixth Circuit Court of Appeals in *Putnam Pit* concluded that the City of Cookeville’s website was a “nonpublic” forum under the First Amendment because the website was not open to the public, and before and after the City

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<sup>282</sup> *Id.* (citing *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 802 (1985)).

<sup>283</sup> See *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990) (concluding that City councils have authority to limit speech through the imposition of agendas and rules of order and decorum).

<sup>284</sup> *Perry*, 460 U.S. at 46.

<sup>285</sup> *Putnam Pit*, 221 F.3d at 845 (citing *Cornelius*, 473 U.S. at 811).

<sup>286</sup> *Jacobson v. Bonine*, 123 F.3d 1272 (9th Cir. 1997); *Children of the Rosary v. City of Phoenix*, 154 F.3d 972 (9th Cir. 1998).

<sup>287</sup> *Perry*, 460 U.S. at 46.

adopted a website link policy, links had been established on an individualized basis.<sup>288</sup> This determination is significant because a government entity, as previously discussed, has more discretion to regulate public expression in a nonpublic forum than it does in a “traditional public forum” (such as a park) or in a “designated public forum” (a place expressly opened for free speech by the public). The court also emphasized that the City had legitimate interests “in keeping links that are consistent with the purpose of the site—providing information about City services, attractions and officials.”<sup>289</sup>

Despite the fact that the court in *Putnam Pit* determined that the City’s website was a nonpublic forum, giving the City broad discretion to limit access to its website links, the court stated that the City could not deny links “solely based on the controversial views” the publisher espouses.<sup>290</sup> The court concluded that the City’s “requirement that websites eligible to be linked to the City’s site promote the City’s tourism, industry and economic welfare gives broad discretion to City officials, raising the possibility of discriminatory application of the policy based on viewpoint.”<sup>291</sup> Accordingly, the court remanded the case to the district court for further proceedings on the issue of whether the City improperly exercised its authority to restrict access to links on its website in a discriminatory manner in violation of the publisher’s First Amendment rights.

The *Vargas* court also concluded that the City’s website was a nonpublic forum, and the City could exclude the initiative proponents from posting information on the site.<sup>292</sup> In contrast to *Putnam Pit*, in *Vargas* the City did not permit access to the web page by either proponents or opponents of the ballot initiative.<sup>293</sup>

Limiting use of a city website only to city-related activities may result in a court finding that the public forum analysis is not appropriate under the facts, and that the issue should be evaluated instead under the doctrine of governmental speech.<sup>294</sup> The U.S. Supreme Court has ruled that the Free Speech clause does not apply to government speech, because the Free Speech Clause restricts government regulation of private speech and does not regulate government speech.<sup>295</sup> Under the government speech doctrine, the government has the right to speak for itself and a government entity may exercise this same freedom

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<sup>288</sup> *Putnam Pit, Inc.*, 221 F.3d at 844.

<sup>289</sup> *Id.* at 845.

<sup>290</sup> *Id.*

<sup>291</sup> *Id.* at 845-46 (citations omitted).

<sup>292</sup> *Vargas*, 46 Cal. 4th at 37 n.18.

<sup>293</sup> See *Id.*

<sup>294</sup> *Pleasant Grove City v. Summum*, 555 U.S. 460, 467 (2009).

<sup>295</sup> *Id.*

to express its views when it receives assistance from private sources for the purpose of delivering a government-controlled message.<sup>296</sup>

In *Sutcliffe v. Epping School District*, an advocacy group challenged the Town of Epping after the town refused to include the group's hyperlink on the town's website.<sup>297</sup> The group wanted to present opinions countering the town's budget proposals regarding town and school activities. The group contended its hyperlink should have been allowed because the town had included a hyperlink to a one-day event put on by "SUE", which was part of a state university-sponsored program and was to be held among town residents to foster community spirit, civic discourse, and the organization of community-defined projects and action groups. By unwritten practice, the town had previously allowed only hyperlinks that would promote providing information about the town, and did not permit links that were political or advocated for certain candidates. A written policy established after the group's request limited hyperlinks to those for governmental agencies or events and programs coordinated or sponsored by the town.

The federal appeals court ruled in *Sutcliffe* that a government entity has the right to express itself on means of communication that the government owned. The town engaged in government speech because the town created the website and selected which hyperlinks to place on its website to convey information about the town to its citizens and the outside world and, by choosing only certain hyperlinks to place on that website, communicated an important message about itself.<sup>298</sup> Hyperlinks were added only with approval by the Board of Selectmen. The court also rejected the group's claim that the town engaged in viewpoint discrimination, because the SUE event was a town-sponsored and financially-supported event, and nonpartisan.<sup>299</sup> The court also concluded that a public forum analysis did not apply under the facts, because the town's website is not a traditional public forum, and the website was not a designated public forum because there was no evidence that the town intentionally opened a nontraditional public forum for public discourse.<sup>300</sup>

Accordingly, in drafting and administering website link policies, a public agency should be mindful that "nonpublic forum status 'does not mean that the government can restrict speech in whatever way it likes'."<sup>301</sup> A public agency may not deny requests to post information and links simply because they do not agree with a requesting party's views or the views espoused on the requesting

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<sup>296</sup> *Id.* at 468.

<sup>297</sup> *Sutcliffe v. Epping School District*, 584 F.3d 314 (1st Cir. 2009).

<sup>298</sup> *Id.* at 331.

<sup>299</sup> *Id.* at 331-332.

<sup>300</sup> *Id.* at 333-334.

<sup>301</sup> *Putnam Pit Inc.*, 221 F.3d at 846 (citations omitted).

party's website, but an across-the-board policy that does not discriminate on the basis of viewpoint should withstand judicial scrutiny. Reserving the website only for the public agency's activities and purposes may also help the public agency demonstrate that it is engaging in government speech, and has not created a public forum.

## **G. Chat Rooms and Forums**

Note that the conclusion would have likely been different in *Vargas* if the website had contained a chat room. The term "chat room" generally refers to an area of a website that allows for a real-time interactive discussion between whoever wishes to participate, with every participant seeing what every other participant types in. Chat rooms allow visitors to access web pages to state their views on a topic of discussion, and in unmoderated chat rooms, to say anything about any subject. In *Vargas*, the California Supreme Court did not address chat rooms. However, in the prior appellate court decision, which was superseded on other grounds by the California Supreme Court, the appellate court had little trouble concluding that a chat room on a city web page would constitute a public forum:

As noted above, "electronic communication media may constitute public forums. Websites that are accessible free of charge to any member of the public where members of the public may read the views and information posted, and post their own opinions, meet the definition of a public forum . . . ." <sup>302</sup>

*Ampex Corp. v. Cargle* and *ComputerXpress, Inc. v. Jackson*, were "anti-SLAPP" motions brought by defendants in defamation and libel actions, which are motions to strike a "strategic lawsuit against public participation." In order to have a viable anti-SLAPP motion, the statements at issue must be made in a public forum, and both opinions concluded that chat rooms on the websites were public forums.

The federal courts increasingly hold that chat rooms and other forms of social media may constitute public forums. In 2017, the U.S. Supreme Court described cyberspace, and social media, as follows: "While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the 'vast democratic forums of the Internet' in general, [citation omitted] , and social media in particular."<sup>303</sup>

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<sup>302</sup> *Vargas v. City of Salinas*, 37 Cal. Rptr. 3d 506, 527 (2005) (citing *Ampex Corp. v. Cargle*, 128 Cal. App. 4th 1569, 1576 (1 Dist. 2005); *ComputerXpress, Inc. v. Jackson*, 93 Cal. App. 4th 993, 1006-07 (4 Dist. 2001)).

<sup>303</sup> See *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735-36 (2017) (Supreme Court ruled that a North Carolina statute prohibiting sex offenders from accessing social networking websites violated the First Amendment because even

In a 2019 decision, *Davison v. Randall*, the Fourth Circuit Court of Appeals ruled that a Facebook page set up by the chair of the county board of supervisors was a public forum and that the chair violated a resident's First Amendment rights by engaging in viewpoint discrimination because the resident was banned from the comment section of the Facebook page for 12 hours due to his past criticism of public school officials.<sup>304</sup>

As reflected in the circuit court's recitation of the facts, the day before Phyllis Randall was sworn in as chair of the county board of supervisors, she set up a Facebook page entitled the "Chair Phyllis J. Randall" Facebook Page (the "Chair's Facebook Page"), which she designated as a "governmental official" page.<sup>305</sup> She expressly invited "ANY Loudoun citizen" to make posts to the comments section on the interactive component of the Chair's Facebook Page, with respect to "ANY issues, request, criticism, complement or just your thoughts."<sup>306</sup> The public made numerous posts on matters of public concern.<sup>307</sup>

The Fourth Circuit concluded that Randall placed no restrictions on the public's access to the Chair's Facebook page or the public's use of the interactive component of the Chair's Facebook Page.<sup>308</sup> The court ruled that the Chair's Facebook page was a public forum because she opened the page to unlimited public discourse, and that the Facebook page was compatible with expressive activity.<sup>309</sup> The court emphasized that "An 'exchange of views' is precisely what Randall sought—and what in fact transpired...."<sup>310</sup>

A similar conclusion would likely result when evaluating a "forum" or "message board" on a city web page, which are similar to chat rooms but do not occur in real-time; instead, people post messages one at a time that are typically grouped by topic and preserved on the web page in chronological order, for anyone to read. As their names suggests, a "forum" or "message board" on a city web page would potentially constitute a "public forum."

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assuming that the statute was content neutral, the statute could not survive intermediate scrutiny because it was not narrowly tailored to serve a significant governmental interest).

<sup>304</sup> *Davison v. Randall*, 912 F. 3d 666 (4th Dist. 2019).

<sup>305</sup> *Id.*, at 673.

<sup>306</sup> *Id.*, at 673, 682.

<sup>307</sup> *Id.* at 681.

<sup>308</sup> *Id.*, at 682.

<sup>309</sup> *Id.*, at 682.

<sup>310</sup> *Id.* See also *Knight First Amendment Institute v. Trump*, 302 F. Supp. 3d 541 (S.D.N.Y. 2018), appeal filed 6/5/18 {2nd Cir.} [district court held that President Trump's Twitter account constituted a public forum, because the President and the White House Social Media Director used the Twitter account for governmental functions]. See also *One Wisconsin Now v. Kremer*, 2019 WL 266292 (W.D. Wis. 2019) (district court ruled that the interactive portions of several state legislators' Twitter accounts constituted "designated public forums" under the First Amendment because the legislators created and operated their Twitter accounts in order to communicate with members of the public about news and information related to their roles as public officials and did not limit access to their accounts by general public; and the legislators violated the First Amendment by blocking a nonprofit liberal advocacy group from the interactive portion of the legislators' Twitter accounts).

## H. Accessibility Requirements

One other concern in designing a local agency's website is whether it is accessible to individuals with disabilities. Under the Americans with Disabilities Act (the "ADA"), local governments must ensure that they provide qualified individuals with disabilities equal access to their programs and services, including by making reasonable modifications to rules, policies or practices, removing architectural, communication or transportation barriers, or providing auxiliary aids or services, unless doing so would fundamentally alter the nature of their programs or services or would impose an undue burden.<sup>311</sup> Local governments must take appropriate steps to ensure that their communications with applicants, participants, members of the public and companions are as effective as communications with others, and furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in and enjoy the benefits of a government service, program or activity.<sup>312</sup> Based on these requirements, local agency websites must be designed to be accessible to individuals with disabilities.<sup>313</sup> In designing and maintaining an agency's web page to ensure compliance with First Amendment and Brown Act requirements, an agency should make sure it is designed for accessibility as well.

In 2010, the U.S. Department of Justice issued advance notices of proposed rulemaking to consider revising the regulations of Title II of the ADA to establish federal technical requirements to make accessible the services, programs or activities offered by state and local governments to the public by websites,<sup>314</sup> but in late 2017 withdrew those rulemaking actions.<sup>315</sup> Even without specific technical standards applicable to local governments, there are a number of regulations and guidelines that may be used to design accessible public websites. These include:

- The Federal Information and Communications Technology (ICT) Final Standards and Guidelines, set forth at 36 C.F.R. parts 1193 and 1194;<sup>316</sup> and

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<sup>311</sup> 42 U.S.C. § 12131 et seq.

<sup>312</sup> 28 C.F.R. 35.160(a) and (b)(1).

<sup>313</sup> See U.S. Dep't of Justice, Accessibility of State and Local Government Websites to People with Disabilities (available at <http://www.ada.gov/websites2.htm> or [https://www.ada.gov/websites2\\_pmt.pdf](https://www.ada.gov/websites2_pmt.pdf); U.S. Dep't of Justice, ADA Best Practices Tool Kit for State and Local Governments, Chapter 5, "Website Accessibility Under Title II of the ADA" (available at <https://www.ada.gov/pccatoolkit/chap5toolkit.htm> or [https://www.ada.gov/pccatoolkit/ch3\\_toolkit.pdf](https://www.ada.gov/pccatoolkit/ch3_toolkit.pdf)). See *Barden v. City of Sacramento*, 292 F.3d 1073, 1076-1077 (9th Cir. 2002) (holding that the ADA must be construed broadly to apply to normal functions of a municipal entity in order to effectively implement the ADA's fundamental purpose of providing a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities).

<sup>314</sup> See 75 Fed. Reg. 43460 (July 26, 2010) and 81 FR 28658 (May 9, 2016).

<sup>315</sup> 82 Fed. Reg. 60932 (December 26, 2017).

<sup>316</sup> 82 Fed. Reg. 5790-01 (1/18/17), 2017 WL 168818, as amended 83 Fed. Reg. 2912 (1/22/18), 2018 WL 488398. These federal regulations were enacted pursuant to Section 508 of the Workforce Rehabilitation Act of 1973, as amended

- The World Wide Web Consortium (W3C) Web Content Accessibility Guidelines.<sup>317</sup>

While these sources do not expressly apply to city websites, they provide various methods of ensuring that a web page is accessible, including providing text equivalents for graphics, ensuring that information conveyed with color is also available without color, and using high contrast color choices. Many state and local agencies have incorporated the federal requirements into the design of their information technology systems, including their websites.<sup>318</sup>

In addition, other federal laws may impose accessibility requirements on local government websites, depending on the circumstances. For example, Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability by federal agencies and recipients of federal assistance, and consequently recipients of federal funds may need to meet federal accessibility requirements.<sup>319</sup>

Providing accommodations for persons with disabilities to use public websites is not particularly onerous; in fact, the Department of Justice has stated that “implementing accessibility features is not difficult and will seldom change the layout or appearance of web pages.”<sup>320</sup>

## IV. CONCLUSIONS

The law related to electronic documents continues to evolve as computer technology advances and public officials respond and adapt to those advances. The advent of email, text messages and other forms of social media has expanded the opportunities for collaboration greatly, but has simultaneously expanded the potential for inadvertent Brown Act violations, as well as unwanted disclosure of preliminary or sensitive information when emails and text messages must be disclosed in response to a Public Records Act request. When using email, public officials should refrain from using “reply all” to avoid serial meetings, and should be aware of the disclosure requirements of the Brown Act for documents related to items discussed at a public meeting. Public officials

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(29 U.S.C. § 794d), and the Telecommunications Act of 1996 (47 U.S.C. §§ 153 and 255). Section 508 requires programs and activities funded by federal agencies to be accessible to people with disabilities, including federal employees and members of the public, and covers ICT developed, procured, maintained, or used by federal agencies. The Telecommunications Act requires in part that telecommunications products and services be accessible to people with disabilities.

<sup>317</sup> Available at <http://www.w3.org/>. The revised Section 508 standards contained in the federal regulations are based on WCAG 2.0 developed by the World Wide Web Consortium (W3C).

<sup>318</sup> In California, state websites must meet both the web accessibility standards in California Government Code § 11135, which adopted the Section 508 standards and the Priority 1 and 2 level checkpoints of the Web Content Accessibility Guidelines 2.0 (WCAG 2.0 “AA” Conformance Level) developed by the World Wide Web Consortium (W3C).

<sup>319</sup> 29 U.S.C. § 794.

<sup>320</sup> U.S. Dep’t of Justice, Accessibility of State and Local Government Websites to People with Disabilities, <http://www.ada.gov/websites2.htm>.

should also be sensitive to the risk that the Public Records Act may require disclosure of emails or text messages in which they discuss public business, and not treat them as casual conversation. While the deliberative process privilege may apply to protect some such emails or text messages, the doctrine has been applied sparingly by California courts. A clear policy regarding the deletion of emails and text messages will also help to reduce unwanted exposure, although an agency must be able to suspend its usual deletion procedures to preserve electronic records potentially relevant to state or federal litigation.

Although federal and state laws continue to develop, electronic documents and information other than emails (for example, posts on social media websites, such as Facebook<sup>321</sup> or Twitter,<sup>322</sup> that are deemed to be a public forum or otherwise relate to an agency's public business) may be subject to disclosure under the California Public Records Act, California discovery rules, and Federal Rules of Civil Procedure 26(a). An agency must make electronic records available in an electronic format if requested in response to a Public Records Act request. An agency may also have to disclose electronic records in litigation and even metadata may be discoverable. Thus, it is important to avoid the automatic creation of metadata, to the extent possible. Public officials should also consult with their information technology departments to ensure that metadata is not inadvertently inserted into electronic records when they are created.

With respect to websites, caution must be taken to ensure a public agency's website does not indicate support or approval of, or promote or advocate for, a candidate for elective office. Likewise, a public agency website cannot be used to advocate for or against an initiative election. In addition to avoiding express advocacy that unambiguously suggests a particular position in a campaign, public officials must also avoid any actions which, based on their "style, tenor and timing", may lead to a determination that a public agency website contains impermissible advocacy.

The content of a website link policy, and the manner in which such a policy is implemented, are critical in a public agency's ability to regulate the information and links that will be permitted on its website. It is important that a public

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<sup>321</sup> See discussion in Part III(G), above, regarding *Davison v. Randall*, 912 F.3d 666 (county official's Facebook page deemed a public form). See also *German v. Eudaly*, 2018 WL 3212020 (D. Ore. 2018) [on facts presented, judge ruled that a city commissioner did not violate a public activist's right to petition the government when the commissioner blocked the activist from seeing the commissioner's nonofficial Facebook page and denied a public records request to see the Facebook page, but granted the activist leave to amend her complaint to show that the commissioner acted in her official capacity when using her nonofficial Facebook page].

<sup>322</sup> See discussion in Part III(G), fn. 310, above, regarding *Knight First Amendment Institute v. Trump*, 302 F. Supp. 3d 541 (S.D.N.Y. 2018) (President Trump's Twitter account constituted a public forum, because the President and the White House Social Media Director used the Twitter account for governmental functions); and *One Wisconsin Now v. Kremer*, 2019 WL 266292 (interactive portions of state legislators' Twitter accounts constituted a designated public forum under the First Amendment).

agency does not arbitrarily discriminate in denying requests for website links. The establishment and adherence to a specific written policy regarding website links would likely assist a public agency in avoiding the litigation challenges faced by the City of Cookeville in the *Putnam Pit* case, and should assist generally in avoiding violations of the First Amendment. A uniform policy, such as that upheld in the *Vargas* opinion, may serve as a viable defense to such challenges.

We have several recommendations for drafting website policies. First, the website link policy should contain a “statement of purpose” indicating that neither the public agency’s website nor its links list are “forums” for expressive activity by the public. The following is our suggested language for that portion of the policy, for the hypothetical City of Anytown:

This policy governs the establishment of external links on the City of Anytown’s official website. For purposes of this policy, an ‘external link’ is a hyperlink from the City of Anytown’s website to a website maintained by another party. Neither the City of Anytown’s website nor the external links listed on such website constitute a forum for expressive activity by members of the public. Rather, the purpose of the City of Anytown’s website and the external links list is to provide information about officials, services and attractions related to City of Anytown. This policy is declaratory of the City of Anytown’s existing administrative practice regarding the establishment of external links on its website.

Second, the website link policy should specifically designate the types of organizations that are eligible to have a link established to their website. We think eligibility may be limited to non-profit entities (as Cookeville chose to do), but it does not have to be so restricted. We also recommend that the website specifically exclude links to sites that have as their purpose the election or defeat of specific candidates or the passage or defeat of specific ballot measures, regardless of political position. In our opinion, implementation of these suggestions will strengthen a public agency’s position if it ever becomes necessary to defend a decision to deny a request for a link from a public agency’s website.

Finally, the agency should ensure that its web page complies with the accessibility requirements of the ADA, such as providing text equivalents for graphics, ensuring that information conveyed with color is also available without color, and using high contrast color choices.

## **PART THREE.**

# **THE CALIFORNIA PUBLIC RECORDS ACT**

### **Article 1 – General Provisions**

**California Government Code Sections 6250-6270.5**

### **Article 2 – Other Exemptions from Disclosure**

**California Government Code Sections 6275-6276.48**

# The California Public Records Act

## ARTICLE 1 – GENERAL PROVISIONS CALIFORNIA GOVERNMENT CODE SECTIONS 6250-6270

### **Section 6250. Legislative findings and declarations**

In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

### **Section 6251. Short title**

This chapter shall be known and may be cited as the California Public Records Act.

### **Section 6252. Definitions**

As used in this chapter:

- (a) "Local agency" includes a county; City, whether general law or chartered; City and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.
- (b) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.
- (c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.
- (d) "Public agency" means any state or local agency.
- (e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.
- (f) (1) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state

body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

- (2) Notwithstanding paragraph (1) or any other law, "state agency" shall also mean the State Bar of California, as described in Section 6001 of the Business and Professions Code.
- (g) "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

**Section 6252.5. Elected member or officer of state or local agency**

Notwithstanding the definition of "member of the public" in Section 6252, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.

This section does not constitute a change in, but is declaratory of, existing law.

**Section 6252.6. Disclosure of name, date of birth, and date of death of foster child to county child welfare agency**

Notwithstanding paragraph (2) of subdivision (a) of Section 827 of the Welfare and Institutions Code, after the death of a foster child who is a minor, the name, date of birth, and date of death of the child shall be subject to disclosure by the county child welfare agency pursuant to this chapter.

**Section 6252.7. Authority of legislative body or local agency members to access a writing of the body or agency**

Notwithstanding Section 6252.5 or any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency, as defined in Section 54951, shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available.

**Section 6253. Public records open to inspection; agency duties; time limits**

- (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.
- (b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.
- (c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:
  - (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
  - (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
  - (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more

components of the agency having substantial subject matter interest therein.

- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.
- (d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.
- (e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.
- (f) In addition to maintaining public records for public inspection during the office hours of the public agency, a public agency may comply with subdivision (a) by posting any public record on its Internet Web site and, in response to a request for a public record posted on the Internet Web site, directing a member of the public to the location on the Internet Web site where the public record is posted. However, if after the public agency directs a member of the public to the Internet Web site, the member of the public requesting the public record requests a copy of the public record due to an inability to access or reproduce the public record from the Internet Web site, the public agency shall promptly provide a copy of the public record pursuant to subdivision (b).

**Section 6253.1. Assistance to members of the public regarding requests to inspect a public record or obtain a copy; duties of the public agency**

- (a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:
  - (1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.
  - (2) Describe the information technology and physical location in which the records exist.

- (3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.
- (b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.
- (c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253.
- (d) This section shall not apply to a request for public records if any of the following applies:
  - (1) The public agency makes available the requested records pursuant to Section 6253.
  - (2) The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 6254.
  - (3) The public agency makes available an index of its records.

**Section 6253.2. Disclosure of information for in-home supportive services, personal care services, or Community First Choice Option**

- (a) Notwithstanding any other provision of this chapter to the contrary, information regarding persons paid by the state to provide in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, or services provided pursuant to Section 14132.95, 14132.952, or 14132.956 of the Welfare and Institutions Code, is not subject to public disclosure pursuant to this chapter, except as provided in subdivision (b).
- (b) Copies of names, addresses, home telephone numbers, and personal cellular telephone numbers of persons described in subdivision (a) shall be made available, upon request, to an exclusive bargaining agent and to any labor organization seeking representation rights pursuant to Section 12301.6 or 12302.25 of the Welfare and Institutions Code or the In-Home Supportive Services Employer-Employee Relations Act (Title 23 (commencing with Section 110000)). This information shall not be used by the receiving entity for any purpose other than the employee organizing, representation, and assistance activities of the labor organization.

- (c) This section applies solely to individuals who provide services under the In-Home Supportive Services Program (Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code), the Personal Care Services Program pursuant to Section 14132.95 of the Welfare and Institutions Code, the In-Home Supportive Services Plus Option pursuant to Section 14132.952 of the Welfare and Institutions Code, or the Community First Choice Option pursuant to Section 14132.956 of the Welfare and Institutions Code.
- (d) Nothing in this section is intended to alter or shall be interpreted to alter the rights of parties under the In-Home Supportive Services Employer-Employee Relations Act (Title 23 (commencing with Section 110000)) or any other labor relations law.
- (e) This section shall be inoperative if the Coordinated Care Initiative becomes inoperative pursuant to Section 34 of the act that added this subdivision.

**Section 6253.2. Disclosure of information for in-home supportive services or personal care services**

- (a) Notwithstanding any other provision of this chapter to the contrary, information regarding persons paid by the state to provide in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code or personal care services pursuant to Section 14132.95 of the Welfare and Institutions Code, is not subject to public disclosure pursuant to this chapter, except as provided in subdivision (b).
- (b) Copies of names, addresses, and telephone numbers of persons described in subdivision (a) shall be made available, upon request, to an exclusive bargaining agent and to any labor organization seeking representation rights pursuant to subdivision (c) of Section 12301.6 or Section 12302.25 of the Welfare and Institutions Code or Chapter 10 (commencing with Section 3500) of Division 4 of Title 1. This information shall not be used by the receiving entity for any purpose other than the employee organizing, representation, and assistance activities of the labor organization.
- (c) This section applies solely to individuals who provide services under the In-Home Supportive Services Program (Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code) or the Personal Care Services Program pursuant to Section 14132.95 of the Welfare and Institutions Code.

- (d) Nothing in this section is intended to alter or shall be interpreted to alter the rights of parties under the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4) or any other labor relations law.
- (e) This section shall be operative only if Section 1 of the act that added this subdivision becomes inoperative pursuant to subdivision (e) of Section 1.

### **Section 6253.3. Disclosure of information; control**

A state or local agency may not allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this chapter.

### **Section 6253.31. Contract requirements; public disclosure**

Notwithstanding any contract term to the contrary, a contract entered into by a state or local agency subject to this chapter, including the University of California, that requires a private entity to review, audit, or report on any aspect of that agency shall be public to the extent the contract is otherwise subject to disclosure under this chapter.

### **Section 6253.4. Agency regulations and guidelines**

- (a) Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.

The following state and local bodies shall establish written guidelines for accessibility of records. A copy of these guidelines shall be posted in a conspicuous public place at the offices of these bodies, and a copy of the guidelines shall be available upon request free of charge to any person requesting that body's records:

Department of Motor Vehicles  
Department of Consumer Affairs  
Transportation Agency  
Bureau of Real Estate  
Department of Corrections and Rehabilitation  
Division of Juvenile Justice  
Department of Justice  
Department of Insurance  
Department of Business Oversight  
Department of Managed Health Care  
Secretary of State  
State Air Resources Board

Department of Water Resources  
Department of Parks and Recreation  
San Francisco Bay Conservation and Development Commission  
State Board of Equalization  
State Department of Health Care Services  
Employment Development Department  
State Department of Public Health  
State Department of Social Services  
State Department of State Hospitals  
State Department of Developmental Services  
Public Employees' Retirement System  
Teachers' Retirement Board  
Department of Industrial Relations  
Department of General Services  
Department of Veterans Affairs  
Public Utilities Commission  
California Coastal Commission  
State Water Resources Control Board  
San Francisco Bay Area Rapid Transit District  
All regional water quality control boards  
Los Angeles County Air Pollution Control District  
Bay Area Air Pollution Control District  
Golden Gate Bridge, Highway and Transportation District  
Department of Toxic Substances Control  
Office of Environmental Health Hazard Assessment

- (b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public. The guidelines and regulations adopted pursuant to this section shall not operate to limit the hours public records are open for inspection as prescribed in Section 6253.

**Section 6253.5. Initiative, referendum, recall petitions, and petitions for reorganization of school districts or community college districts deemed not public records; examination by proponents**

Notwithstanding Sections 6252 and 6253, statewide, county, City, and district initiative, referendum, and recall petitions, petitions circulated pursuant to Section 5091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with

Section 74000) of the Education Code and all memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving the petitions or who are responsible for the preparation of that memoranda and, if the petition is found to be insufficient, by the proponents of the petition and the representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor. However, the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a City attorney shall be permitted to examine the material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, the examination shall commence not later than 21 days after certification of insufficiency.

- (a) As used in this section, "petition" shall mean any petition to which a registered voter has affixed his or her signature.
- (b) As used in this section "proponents of the petition" means the following:
  - (1) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he or she prepare a title and summary of the chief purpose and points of the proposed measure.
  - (2) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the elections official.
  - (3) For recall measures, the person or persons defined in Section 343 of the Elections Code.
  - (4) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.
  - (5) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

- (6) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code.

**Section 6253.6. Bilingual ballot or ballot pamphlet requests not deemed public records**

- (a) Notwithstanding the provisions of Sections 6252 and 6253, information compiled by public officers or public employees revealing the identity of persons who have requested bilingual ballots or ballot pamphlets, made in accordance with any federal or state law, or other data that would reveal the identity of the requester, shall not be deemed to be public records and shall not be provided to any person other than public officers or public employees who are responsible for receiving those requests and processing the same.
- (b) Nothing contained in subdivision (a) shall be construed as prohibiting any person who is otherwise authorized by law from examining election materials, including, but not limited to, affidavits of registration, provided that requests for bilingual ballots or ballot pamphlets shall be subject to the restrictions contained in subdivision (a).

**Section 6253.8. Enforcement orders; Internet website**

- (a) Every final enforcement order issued by an agency listed in subdivision (b) under any provision of law that is administered by an entity listed in subdivision (b), shall be displayed on the entity's Internet website, if the final enforcement order is a public record that is not exempt from disclosure pursuant to this chapter.
- (b) This section applies to the California Environmental Protection Agency and to all of the following entities within the agency:
  - (1) The State Air Resources Board.
  - (2) The California Integrated Waste Management Board.
  - (3) The State Water Resources Control Board, and each California regional water quality control board.
  - (4) The Department of Pesticide Regulation.
  - (5) The Department of Toxic Substances Control.

- (c) (1) Except as provided in paragraph (2), for purposes of this section, an enforcement order is final when the time for judicial review has expired on or after January 1, 2001, or when all means of judicial review have been exhausted on or after January 1, 2001.
- (2) In addition to the requirements of paragraph (1), with regard to a final enforcement order issued by the State Water Resources Control Board or a California regional water quality control board, this section shall apply only to a final enforcement order adopted by that board or a regional board at a public meeting.
- (d) An order posted pursuant to this section shall be posted for not less than one year.
- (e) The California Environmental Protection Agency shall oversee the implementation of this section.
- (f) This section shall become operative April 1, 2001.

**Section 6253.9. Information in an electronic format; costs; application; availability**

- (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:
  - (1) The agency shall make the information available in any electronic format in which it holds the information.
  - (2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.
- (b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:
  - (1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic

record and the record is one that is produced only at otherwise regularly scheduled intervals.

- (2) The request would require data compilation, extraction, or programming to produce the record.
- (c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.
- (d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.
- (e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.
- (f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.
- (g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

**Section 6253.10. Public record posts on Internet Resource; open format requirements**

If a local agency, except a school district, maintains an Internet Resource, including, but not limited to, an Internet Web site, Internet Web page, or Internet Web portal, which the local agency describes or titles as “open data,” and the local agency voluntarily posts a public record on that Internet Resource, the local agency shall post the public record in an open format that meets all of the following requirements:

- (a) Retrievable, downloadable, indexable, and electronically searchable by commonly used Internet search applications.
- (b) Platform independent and machine readable.
- (c) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the public record.

- (d) Retains the data definitions and structure present when the data was compiled, if applicable.

#### **Section 6254. Exemption of particular records**

Except as provided in Sections 6254.7 and 6254.13, this chapter does not require the disclosure of any of the following records:

- (a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.
- (b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.
- (c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.
- (d) Records contained in or related to any of the following:
  - (1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.
  - (2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).
  - (3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).
  - (4) Information received in confidence by any state agency referred to in paragraph (1).
- (e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.
- (f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of

Emergency Services, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, this subdivision does not require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

- (1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

- (2) (A) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9 or 647.6 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined in any of the sections of the Penal Code set forth in this subdivision may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.
- (B) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the names and images of a victim of human trafficking, as defined in Section 236.1 of the Penal Code, and of that victim's immediate family, other than a family member who is charged with a criminal offense arising from the same incident, may be withheld at the victim's request until the investigation or any subsequent prosecution is complete. For purposes of this subdivision, "immediate family" shall have the same meaning as that provided in paragraph (3) of subdivision (b) of Section 422.4 of the Penal Code.
- (3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, if the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3

(commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. This paragraph shall not be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

- (4) Notwithstanding any other provision of this subdivision, commencing July 1, 2019, a video or audio recording that relates to a critical incident, as defined in subparagraph (C), may be withheld only as follows:

(A) (i) During an active criminal or administrative investigation, disclosure of a recording related to a critical incident may be delayed for no longer than 45 calendar days after the date the agency knew or reasonably should have known about the incident, if, based on the facts and circumstances depicted in the recording, disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source. If an agency delays disclosure pursuant to this paragraph, the agency shall provide in writing to the requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation and the estimated date for disclosure.

(ii) After 45 days from the date the agency knew or reasonably should have known about the incident, and up to one year from that date, the agency may continue to delay disclosure of a recording if the agency demonstrates that disclosure would substantially interfere with the investigation. After one year from the date the agency knew or reasonably should have known about the incident, the agency may continue to delay disclosure of a recording only if the agency demonstrates by clear and convincing evidence that disclosure would substantially interfere with the investigation. If an agency delays disclosure pursuant to this clause, the agency shall promptly provide in writing to the requester the specific basis for the agency's determination that the interest in

preventing interference with an active investigation outweighs the public interest in disclosure and provide the estimated date for the disclosure. The agency shall reassess withholding and notify the requester every 30 days. A recording withheld by the agency shall be disclosed promptly when the specific basis for withholding is resolved.

(B) (i) If the agency demonstrates, on the facts of the particular case, that the public interest in withholding a video or audio recording clearly outweighs the public interest in disclosure because the release of the recording would, based on the facts and circumstances depicted in the recording, violate the reasonable expectation of privacy of a subject depicted in the recording, the agency shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served by withholding the recording and may use redaction technology, including blurring or distorting images or audio, to obscure those specific portions of the recording that protect that interest. However, the redaction shall not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording and the recording shall not otherwise be edited or altered.

(ii) Except as provided in clause (iii), if the agency demonstrates that the reasonable expectation of privacy of a subject depicted in the recording cannot adequately be protected through redaction as described in clause (i) and that interest outweighs the public interest in disclosure, the agency may withhold the recording from the public, except that the recording, either redacted as provided in clause (i) or unredacted, shall be disclosed promptly, upon request, to any of the following:

(I) The subject of the recording whose privacy is to be protected, or his or her authorized representative.

(II) If the subject is a minor, the parent or legal guardian of the subject whose privacy is to be protected.

(III) If the subject whose privacy is to be protected is deceased, an heir, beneficiary, designated immediate family member, or authorized legal representative of the deceased subject whose privacy is to be protected.

(iii) If disclosure pursuant to clause (ii) would substantially interfere with an active criminal or administrative investigation, the agency

shall provide in writing to the requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation, and provide the video or audio recording. Thereafter, the recording may be withheld by the agency for 45 calendar days, subject to extensions as set forth in clause (ii) of subparagraph (A).

(C) For purposes of this paragraph, a video or audio recording relates to a critical incident if it depicts any of the following incidents:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury.

(D) An agency may provide greater public access to video or audio recordings than the minimum standards set forth in this paragraph.

(E) This paragraph does not alter, limit, or negate any other rights, remedies, or obligations with respect to public records regarding an incident other than a critical incident as described in subparagraph (C).

(F) For purposes of this paragraph, a peace officer does not include any peace officer employed by the Department of Corrections and Rehabilitation.

- (g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of Division 14 of Title 3 of the Education Code.
- (h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

- (i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.
- (j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.
- (k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.
- (l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary. However, public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.
- (m) In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.
- (n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.
- (o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, if an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.
- (p) (1) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4, that reveal a state agency's

deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. This paragraph shall not be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this paragraph.

- (2) Records of local agencies related to activities governed by Chapter 10 (commencing with Section 3500) of Division 4, that reveal a local agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under that chapter. This paragraph shall not be construed to limit the disclosure duties of a local agency with respect to any other records relating to the activities governed by the employee relations act referred to in this paragraph.
- (q) (1) Records of state agencies related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.
- (2) Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. If a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

- (3) Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.
- (4) Notwithstanding any other law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Legislative Analyst's Office. The committee and that office shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.
- (r) Records of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.
- (s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Care Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.
- (t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.
- (u)
  - (1) Information contained in applications for licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.
  - (2) The home address and telephone number of prosecutors, public defenders, peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215 of

the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

- (3) The home address and telephone number of prosecutors, public defenders, peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.
- (v) (1) Records of the Managed Risk Medical Insurance Board and the State Department of Health Care Services related to activities governed by former Part 6.3 (commencing with Section 12695), former Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, or Chapter 2 (commencing with Section 15810) or Chapter 4 (commencing with Section 15870) of Part 3.3 of Division 9 of the Welfare and Institutions Code, and that reveal any of the following:
  - (A) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board or the department, entities with which the board or the department is considering a contract, or entities with which the board or department is considering or enters into any other arrangement under which the board or the department provides, receives, or arranges services or reimbursement.
  - (B) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff or the department or its staff, or records that provide instructions, advice, or training to their employees.
- (2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to former Part 6.3 (commencing with Section 12695), former Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, or Chapter 2.2 (commencing with Section 15810) or Chapter 4 (commencing with Section 15870) of Part 3.3 of Division 9 of the Welfare and Institutions Code, on or after July 1, 1991,

shall be open to inspection one year after their effective dates.

- (B) If a contract that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the effective date of the amendment.
- (3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.
- (4) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contracts or amendments to the contracts are open to inspection pursuant to paragraph (3).
- (w)
  - (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.
  - (2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.
  - (3) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contracts or amendments to the contracts are open to inspection pursuant to paragraph (2).
- (x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of Consumer Affairs

pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

- (y) (1) Records of the Managed Risk Medical Insurance Board and the State Department of Health Care Services related to activities governed by Part 6.2 (commencing with Section 12693) or former Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, of Section 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code, if the records reveal any of the following:
  - (A) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board or the department, entities with which the board or department is considering a contract, or entities with which the board or department is considering or enters into any other arrangement under which the board or department provides, receives, or arranges services or reimbursement.
  - (B) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or the department or its staff, or records that provide instructions, advice, or training to employees.
- (2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code shall be open to inspection one year after their effective dates.
- (B) If a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or former Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code, is amended, the

amendment shall be open to inspection one year after the effective date of the amendment.

- (3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.
- (4) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).
- (5) The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or the department or its staff, shall also apply to the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of the Welfare and Institutions Code.
- (z) Records obtained pursuant to paragraph (2) of subdivision (f) of Section 2891.1 of the Public Utilities Code.
- (aa) A document prepared by or for a state or local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session.
- (ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the Office of Emergency Services for use by that office, including the identity of the person who or entity that voluntarily submitted the information. As used in this subdivision, "voluntarily submitted" means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

- (ac) All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.
- (ad) The following records of the State Compensation Insurance Fund:
  - (1) Records related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.
  - (2) Records related to the discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the fund, and any related deliberations.
  - (3) Records related to the impressions, opinions, recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.
  - (4) Records obtained to provide workers' compensation insurance under Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, including, but not limited to, any medical claims information, policyholder information provided that nothing in this paragraph shall be interpreted to prevent an insurance agent or broker from obtaining proprietary information or other information authorized by law to be obtained by the agent or broker, and information on rates, pricing, and claims handling received from brokers.
  - (5) (A) Records that are trade secrets pursuant to Section 6276.44, or Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, including, without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

- (B) Notwithstanding subparagraph (A), the portions of records containing trade secrets shall be available for review by the Joint Legislative Audit Committee, California State Auditor's Office, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.
- (6) (A) Internal audits containing proprietary information and the following records that are related to an internal audit:
  - (i) Personal papers and correspondence of any person providing assistance to the fund when that person has requested in writing that his or her papers and correspondence be kept private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn, or upon order of the fund.
  - (ii) Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed or an internal audit that contains proprietary information.
- (B) Notwithstanding subparagraph (A), the portions of records containing proprietary information, or any information specified in subparagraph (A) shall be available for review by the Joint Legislative Audit Committee, California State Auditor's Office, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.
- (7) (A) Except as provided in subparagraph (C), contracts entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code shall be open to inspection one year after the contract has been fully executed.
- (B) If a contract entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.
- (C) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the

contract or amendment containing the rates of payment shall be open to inspection.

- (D) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to this paragraph.
- (E) This paragraph is not intended to apply to documents related to contracts with public entities that are not otherwise expressly confidential as to that public entity.
- (F) For purposes of this paragraph, "fully executed" means the point in time when all of the necessary parties to the contract have signed the contract.

This section does not prevent any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

This section does not prevent any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act (29 U.S.C. Sec. 158).

**Section 6254.1. Disclosure of residence, mailing address or results of test for competency to safely operate motor vehicle**

- (a) Except as provided in Section 6254.7, nothing in this chapter requires disclosure of records that are the residence address of any person contained in the records of the Department of Housing and Community Development, if the person has requested confidentiality of that information, in accordance with Section 18081 of the Health and Safety Code.
- (b) Nothing in this chapter requires the disclosure of the residence or mailing address of any person in any record of the Department of Motor Vehicles except in accordance with Section 1808.21 of the Vehicle Code.
- (c) Nothing in this chapter requires the disclosure of the results of a test undertaken pursuant to Section 12804.8 of the Vehicle Code.

**Section 6254.2. Pesticide safety and efficacy information; public disclosure; limitations; procedures**

- (a) Nothing in this chapter exempts from public disclosure the same categories of pesticide safety and efficacy information that are disclosable under paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)), if the individual requesting the information is not an officer, employee, or agent specified in subdivision (h) and signs the affirmation specified in subdivision (h).
- (b) The Director of Pesticide Regulation, upon his or her initiative, or upon receipt of a request pursuant to this chapter for the release of data submitted and designated as a trade secret by a registrant or applicant, shall determine whether any or all of the data so submitted is a properly designated trade secret. In order to assure that the interested public has an opportunity to obtain and review pesticide safety and efficacy data and to comment prior to the expiration of the public comment period on a proposed pesticide registration, the director shall provide notice to interested persons when an application for registration enters the registration evaluation process.
- (c) If the director determines that the data is not a trade secret, the director shall notify the registrant or applicant by certified mail.
- (d) The registrant or applicant shall have 30 days after receipt of this notification to provide the director with a complete justification and statement of the grounds on which the trade secret privilege is claimed. This justification and statement shall be submitted by certified mail.
- (e) The director shall determine whether the data is protected as a trade secret within 15 days after receipt of the justification and statement or, if no justification and statement is filed, within 45 days of the original notice. The director shall notify the registrant or applicant and any party who has requested the data pursuant to this chapter of that determination by certified mail. If the director determines that the data is not protected as a trade secret, the final notice shall also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the data shall be available to any person requesting information pursuant to subdivision (a).
- (f) "Trade secret" means data that is nondisclosable under paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act.

- (g) This section shall be operative only so long as, and to the extent that, enforcement of paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act has not been enjoined by federal court order, and shall become inoperative if an unappealable federal court judgment or decision becomes final that holds that paragraph invalid, to the extent of the invalidity.
- (h) The director shall not knowingly disclose information submitted to the state by an applicant or registrant pursuant to Article 4 (commencing with Section 12811) of Chapter 2 of Division 7 of the Food and Agricultural Code to any officer, employee, or agent of any business or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in countries in addition to the United States, or to any other person who intends to deliver this information to any foreign or multi-national business or entity, unless the applicant or registrant consents to the disclosure. To implement this subdivision, the director shall require the following affirmation to be signed by the person who requests such information:

## AFFIRMATION OF STATUS

This affirmation is required by Section 6254.2 of the Government Code.

I have requested access to information submitted to the Department of Pesticide Regulation (or previously submitted to the Department of Food and Agriculture) by a pesticide applicant or registrant pursuant to the California Food and Agricultural Code. I hereby affirm all of the following statements:

(1) I do not seek access to the information for purposes of delivering it or offering it for sale to any business or other entity, including the business or entity of which I am an officer, employee, or agent engaged in the production, sale, or distribution of pesticides in countries other than the United States or in countries in addition to the United States, or to the officers, employees, or agents of such a business or entity.

(2) I will not purposefully deliver or negligently cause the data to be delivered to a business or entity specified in paragraph (1) or its officers, employees, or agents.

I am aware that I may be subject to criminal penalties under Section 118 of the Penal Code if I make any statement of material facts knowing that the statement is false or if I willfully conceal any material fact.

Name of Requester		Name of Requester's Organization
Signature of Requester		Address of Requester
Date	Request No.	Telephone Number of Requester

Name, Address and Telephone Number of Requester's Client, if the Requester has requested access to the information on behalf of someone other than the Requester or the Requester's address listed above

- (i) Notwithstanding any other provision of this section, the director may disclose information submitted by an applicant or registrant to any person in connection with a public proceeding conducted under law or regulation, if the director determines that the information is needed to determine whether a pesticide, or any ingredient of any pesticide, causes unreasonable adverse effects on health or the environment.
- (j) The director shall maintain records of the names of persons to whom data is disclosed pursuant to this section and the persons or organizations they

represent and shall inform the applicant or registrant of the names and the affiliation of these persons.

- (k) Section 118 of the Penal Code applies to any affirmation made pursuant to this section.
- (l) Any officer or employee of the state or former officer or employee of the state who, because of this employment or official position, obtains possession of, or has access to, material which is prohibited from disclosure by this section, and who, knowing that disclosure of this material is prohibited by this section, willfully discloses the material in any manner to any person not entitled to receive it, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment.

For purposes of this subdivision, any contractor with the state who is furnished information pursuant to this section, or any employee of any contractor, shall be considered an employee of the state.

- (m) This section does not prohibit any person from maintaining a civil action for wrongful disclosure of trade secrets.
- (n) The director may limit an individual to one request per month pursuant to this section if the director determines that a person has made a frivolous request within the past 12-month period.

**Section 6254.3. Public agency employees; home addresses, phone numbers, and birth dates as public records; disclosure**

- (a) The home addresses, home telephone numbers, personal cellular telephone numbers, and birth dates of all employees of a public agency shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:
  - (1) To an agent, or a family member of the individual to whom the information pertains.
  - (2) To an officer or employee of another public agency when necessary for the performance of its official duties.
  - (3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and any phone numbers on file with the employer of

employees performing law enforcement-related functions, and the birth date of any employee, shall not be disclosed.

- (4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to public agencies and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.
- (b) Upon written request of any employee, a public agency shall not disclose the employee's home address, home telephone number, personal cellular telephone number, or birth date pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address, home telephone number, and personal cellular telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

**Section 6254.4. Voter registration information; confidentiality**

- (a) The home address, telephone number, email address, precinct number, or other number specified by the Secretary of State for voter registration purposes, and prior registration information shown on the affidavit of registration, is confidential and shall not be disclosed to any person, except pursuant to Section 2194 of the Elections Code.
- (b) For purposes of this section, "home address" means street address only, and does not include an individual's City or post office address.
- (c) The California driver's license number, the California identification card number, the social security number, and any other unique identifier used by the State of California for purposes of voter identification shown on an affidavit of registration, or added to the voter registration records to comply with the requirements of the federal Help America Vote Act of 2002 (42 U.S.C. Sec. 15301 et seq.), are confidential and shall not be disclosed to any person.
- (d) The signature of the voter that is shown on the affidavit of registration is confidential and shall not be disclosed to any person.

**Section 6254.4.5. Disclosure of video or audio recording created during commission or investigation of the crime of rape, incest, sexual assault, domestic violence, or child abuse in which the face, intimate body part, or voice of a victim is depicted; inspection of video or audio recording by the victim**

- (a) This chapter does not require disclosure of a video or audio recording that was created during the commission or investigation of the crime of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident depicted in the recording. An agency shall justify withholding such a video or audio recording by demonstrating, pursuant to Section 6255, that on the facts of the particular case, the public interest served by not disclosing the recording clearly outweighs the public interest served by disclosure of the recording.
- (b) When balancing the public interests as required by this section, an agency shall consider both of the following:
  - (1) The constitutional right to privacy of the person or persons depicted in the recording.
  - (2) Whether the potential harm to the victim caused by disclosing the recording may be mitigated by redacting the recording to obscure images showing intimate body parts and personally identifying characteristics of the victim or by distorting portions of the recording containing the victim's voice, provided that the redaction does not prevent a viewer from being able to fully and accurately perceive the events captured on the recording. The recording shall not otherwise be edited or altered.
- (c) A victim of a crime described in subdivision (a) who is a subject of a recording, the parent or legal guardian of a minor subject, a deceased subject's next of kin, or a subject's legally authorized designee, shall be permitted to inspect the recording and to obtain a copy of the recording. Disclosure under this subdivision does not require that the record be made available to the public pursuant to Section 6254.5.
- (d) Nothing in this section shall be construed to affect any other exemption provided by this chapter.

**Section 6254.5. Disclosures of public records; waiver of exemptions; application of section**

Notwithstanding any other provisions of law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

- (a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.
- (b) Made through other legal proceedings or as otherwise required by law.
- (c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.
- (d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.
- (e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.
- (f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.
- (g) Of records relating to any person that is subject to the jurisdiction of the Department of Business Oversight, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Corporations.

- (h) Made by the Commissioner of Business Oversight under Section 450, 452, 8009, or 18396 of the Financial Code.
- (i) Of records relating to any person that is subject to the jurisdiction of the Department of Managed Health Care, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Managed Health Care.

**Section 6254.6. Private industry wage data from federal bureau of labor statistics; identity of employers; confidentiality**

Whenever a City and county or a joint powers agency, pursuant to a mandatory statute or charter provision to collect private industry wage data for salary setting purposes, or a contract entered to implement that mandate, is provided this data by the federal Bureau of Labor Statistics on the basis that the identity of private industry employers shall remain confidential, the identity of the employers shall not be open to the public or be admitted as evidence in any action or special proceeding.

**Section 6254.7. Air pollution data; public records; notices and orders to building owners; trade secrets; data used to calculate costs of obtaining emission offsets**

- (a) All information, analyses, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution which any article, machine, equipment, or other contrivance will produce, which any air pollution control district or air quality management district, or any other state or local agency or district, requires any applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses the article, machine, equipment, or other contrivance, are public records.
- (b) All air or other pollution monitoring data, including data compiled from stationary sources, are public records.
- (c) All records of notices and orders directed to the owner of any building of violations of housing or building codes, ordinances, statutes, or regulations which constitute violations of standards provided in Section 1941.1 of the Civil Code, and records of subsequent action with respect to those notices and orders, are public records.

- (d) Except as otherwise provided in subdivision (e) and Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code, trade secrets are not public records under this section. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.
- (e) Notwithstanding any other provision of law, all air pollution emission data, including those emission data which constitute trade secrets as defined in subdivision (d), are public records. Data used to calculate emission data are not emission data for the purposes of this subdivision and data which constitute trade secrets and which are used to calculate emission data are not public records.
- (f) Data used to calculate the costs of obtaining emissions offsets are not public records. At the time that an air pollution control district or air quality management district issues a permit to construct to an applicant who is required to obtain offsets pursuant to district rules and regulations, data obtained from the applicant consisting of the year the offset transaction occurred, the amount of offsets purchased, by pollutant, and the total cost, by pollutant, of the offsets purchased is a public record. If an application is denied, the data shall not be a public record.

**Section 6254.8.      Employment contracts between state or local agency and public official or employee; public record**

Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 and 6255.

**Section 6254.9.      Computer software; status as public record; sale, lease, or license authorized; limitations**

- (a) Computer software developed by a state or local agency is not itself a public record under this chapter. The agency may sell, lease, or license the software for commercial or noncommercial use.
- (b) As used in this section, "computer software" includes computer mapping systems, computer programs, and computer graphics systems.

- (c) This section shall not be construed to create an implied warranty on the part of the State of California or any local agency for errors, omissions, or other defects in any computer software as provided pursuant to this section.
- (d) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this chapter.
- (e) Nothing in this section is intended to limit any copyright protections.

**Section 6254.10. Disclosure of records relating to archaeological site information and specified reports not required**

Nothing in this chapter requires disclosure of records that relate to archaeological site information and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency, including the records that the agency obtains through a consultation process between a California Native American tribe and a state or local agency.

**Section 6254.11. Volatile organic compounds or chemical substances information**

Nothing in this chapter requires the disclosure of records that relate to volatile organic compounds or chemical substances information received or compiled by an air pollution control officer pursuant to Section 42303.2 of the Health and Safety Code.

**Section 6254.12. Broker-dealer license information; disciplinary records**

Any information reported to the North American Securities Administrators Association/Financial Industry Regulatory Authority and compiled as disciplinary records which are made available to the Department of Business Oversight through a computer system, shall constitute a public record. Notwithstanding any other provision of law, the Department of Business Oversight may disclose that information and the current license status and the year of issuance of the license of a broker-dealer upon written or oral request pursuant to Section 25247 of the Corporations Code.

**Section 6254.13. Statewide testing program; test questions or materials; disclosure to Member of Legislature or Governor; confidentiality**

Notwithstanding Section 6254, upon the request of any Member of the Legislature or upon request of the Governor or his or her designee, test questions or materials that would be used to administer an examination and are provided by the State Department of Education and administered as part of a statewide testing program of pupils enrolled in the public schools shall be disclosed to the requester. These questions or materials may not include an individual examination that has been administered to a pupil and scored. The requester may not take physical possession of the questions or materials, but may view the questions or materials at a location selected by the department. Upon viewing this information, the requester shall keep the materials that he or she has seen confidential.

**Section 6254.14. Health care services contract records of the Department of Corrections and Rehabilitation or the California Medical Assistance Commission**

- (a) (1) Except as provided in Sections 6254 and 6254.7, nothing in this chapter shall be construed to require disclosure of records of the Department of Corrections and Rehabilitation that relate to health care services contract negotiations, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations, including, but not limited to, records related to those negotiations such as meeting minutes, research, work product, theories, or strategy of the department, or its staff, or members of the California Medical Assistance Commission, or its staff, who act in consultation with, or on behalf of, the department.
- (2) Except for the portion of a contract that contains the rates of payment, contracts for health services entered into by the Department of Corrections and Rehabilitation or the California Medical Assistance Commission on or after July 1, 1993, shall be open to inspection one year after they are fully executed. In the event that a contract for health services that is entered into prior to July 1, 1993, is amended on or after July 1, 1993, the amendment, except for any portion containing rates of payment, shall be open to inspection one year after it is fully executed.
- (3) Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

- (4) Notwithstanding any other provision of law, including, but not limited to, Section 1060 of the Evidence Code, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee, the California State Auditor's Office, and the Legislative Analyst's Office. The Joint Legislative Audit Committee, the California State Auditor's Office, and the Legislative Analyst's Office shall maintain the confidentiality of the contracts and amendments until the contract or amendment is fully open to inspection by the public.
  - (5) It is the intent of the Legislature that confidentiality of health care provider contracts, and of the contracting process as provided in this subdivision, is intended to protect the competitive nature of the negotiation process, and shall not affect public access to other information relating to the delivery of health care services.
- (b) The inspection authority and confidentiality requirements established in subdivisions (q), (v), and (y) of Section 6254 for the Legislative Audit Committee shall also apply to the California State Auditor's Office and the Legislative Analyst's Office.

**Section 6254.15. Information relating to retention, location, or expansion of corporate facility within the state; redaction**

Nothing in this chapter shall be construed to require the disclosure of records that are any of the following: corporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California. Except as provided below, incentives offered by state or local government agencies, if any, shall be disclosed upon communication to the agency or the public of a decision to stay, locate, relocate, or expand, by a company, or upon application by that company to a governmental agency for a general plan amendment, rezone, use permit, building permit, or any other permit, whichever occurs first. The agency shall delete, prior to disclosure to the public, information that is exempt pursuant to this section from any record describing state or local incentives offered by an agency to a private business to retain, locate, relocate, or expand the business within California.

**Section 6254.16. Utility customers; disclosure of names, credit histories, usage data, addresses, or telephone numbers**

Nothing in this chapter shall be construed to require the disclosure of the name, credit history, utility usage data, home address, or telephone number of utility

customers of local agencies, except that disclosure of name, utility usage data, and the home address of utility customers of local agencies shall be made available upon request as follows:

- (a) To an agent or authorized family member of the person to whom the information pertains.
- (b) To an officer or employee of another governmental agency when necessary for the performance of its official duties.
- (c) Upon court order or the request of a law enforcement agency relative to an ongoing investigation.
- (d) Upon determination by the local agency that the utility customer who is the subject of the request has used utility services in a manner inconsistent with applicable local utility usage policies.
- (e) Upon determination by the local agency that the utility customer who is the subject of the request is an elected or appointed official with authority to determine the utility usage policies of the local agency, provided that the home address of an appointed official shall not be disclosed without his or her consent.
- (f) Upon determination by the local agency that the public interest in disclosure of the information clearly outweighs the public interest in nondisclosure.

**Section 6254.17. Requests for assistance by crime victims**

- (a) Nothing in this chapter shall be construed to require disclosure of records of the California Victim Compensation and Government Claims Board that relate to a request for assistance under Article 1 (commencing with Section 13950) of Chapter 5 of Part 4 of Division 3 of Title 2.
- (b) This section shall not apply to a disclosure of the following information, if no information is disclosed that connects the information to a specific victim, derivative victim, or applicant under Article 1 (commencing with Section 13950) of Chapter 5 of Part 4 of Division 3 of Title 2:
  - (1) The amount of money paid to a specific provider of services.
  - (2) Summary data concerning the types of crimes for which assistance is provided.

**Section 6254.18. Exemption of personal information received, collected, or compiled by public agency regarding employees, volunteers, board members, owners, etc. of reproductive health services facilities; definitions; injunctive relief; notification of application; term of protection; notice of separation**

- (a) Nothing in this chapter shall be construed to require disclosure of any personal information received, collected, or compiled by a public agency regarding the employees, volunteers, board members, owners, partners, officers, or contractors of a reproductive health services facility who have notified the public agency pursuant to subdivision (d) if the personal information is contained in a document that relates to the facility.
- (b) For purposes of this section, the following terms have the following meanings:
  - (1) "Contractor" means an individual or entity that contracts with a reproductive health services facility for services related to patient care.
  - (2) "Personal information" means the following information related to an individual that is maintained by a public agency: social security number, physical description, home address, home telephone number, statements of personal worth or personal financial data filed pursuant to subdivision (n) of Section 6254, personal medical history, employment history, electronic mail address, and information that reveals any electronic network location or identity.
  - (3) "Public agency" means all of the following:
    - (A) The State Department of Health Care Services.
    - (B) The Department of Consumer Affairs.
    - (C) The Department of Managed Health Care.
    - (D) The State Department of Public Health.
  - (5) "Reproductive health services facility" means the office of a licensed physician and surgeon whose specialty is family practice, obstetrics, or gynecology, or a licensed clinic, where at least 50 percent of the patients of the physician or the clinic are provided with family planning or abortion services.

- (c) Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to obtain access to employment history information pursuant to Sections 6258 and 6259. If the court finds, based on the facts of a particular case, that the public interest served by disclosure of employment history information clearly outweighs the public interest served by not disclosing the information, the court shall order the officer or person charged with withholding the information to disclose employment history information or show cause why he or she should not do so pursuant to Section 6259.
- (d) In order for this section to apply to an individual who is an employee, volunteer, board member, officer, or contractor of a reproductive health services facility, the individual shall notify the public agency to which his or her personal information is being submitted or has been submitted that he or she falls within the application of this section. The reproductive health services facility shall retain a copy of all notifications submitted pursuant to this section. This notification shall be valid if it complies with all of the following:
  - (1) Is on the official letterhead of the facility.
  - (2) Is clearly separate from any other language present on the same page and is executed by a signature that serves no other purpose than to execute the notification.
  - (3) Is signed and dated by both of the following:
    - (A) The individual whose information is being submitted.
    - (B) The executive officer or his or her designee of the reproductive health services facility.
- (e) The privacy protections for personal information authorized pursuant to this section shall be effective from the time of notification pursuant to subdivision (d) until either one of the following occurs:
  - (1) Six months after the date of separation from a reproductive health services facility for an individual who has served for not more than one year as an employee, contractor, volunteer, board member, or officer of the reproductive health services facility.
  - (2) One year after the date of separation from a reproductive health services facility for an individual who has served for more than one year as an employee, contractor, volunteer, board member, or officer of the reproductive health services facility.

- (f) Within 90 days of separation of an employee, contractor, volunteer, board member, or officer of the reproductive health services facility who has provided notice to a public agency pursuant to subdivision (c), the facility shall provide notice of the separation to the relevant agency or agencies.
- (g) Nothing in this section shall prevent the disclosure by a government agency of data regarding age, race, ethnicity, national origin, or gender of individuals whose personal information is protected pursuant to this section, so long as the data contains no individually identifiable information.

**Section 6254.19. Information security records; records stored within information technology systems**

Nothing in this chapter shall be construed to require the disclosure of an information security record of a public agency, if, on the facts of the particular case, disclosure of that record would reveal vulnerabilities to, or otherwise increase the potential for an attack on, an information technology system of a public agency. Nothing in this section shall be construed to limit public disclosure of records stored within an information technology system of a public agency that are not otherwise exempt from disclosure pursuant to this chapter or any other provision of law.

**Section 6254.20. Electronically collected personal information**

Nothing in this chapter shall be construed to require the disclosure of records that relate to electronically collected personal information, as defined by Section 11015.5, received, collected, or compiled by a state agency.

**Section 6254.21. Posting or sale of elected or appointed official's personal information on Internet; remedies for violation; liability of computer service or software provider**

- (a) No state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual.
- (b) No person shall knowingly post the home address or telephone number of any elected or appointed official, or of the official's residing spouse or child on the Internet knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual. A violation of this subdivision is a misdemeanor. A violation of

this subdivision that leads to the bodily injury of the official, or his or her residing spouse or child, is a misdemeanor or a felony.

- (c) (1) (A) No person, business, or association shall publicly post or publicly display on the Internet the home address or telephone number of any elected or appointed official if that official has either directly or through an agent designated under paragraph (3), made a written demand of that person, business, or association to not disclose his or her home address or telephone number.
- (B) A written demand made under this paragraph by a state constitutional officer, a mayor, or a Member of the Legislature, a City council, or a board of supervisors shall include a statement describing a threat or fear for the safety of that official or of any person residing at the official's home address.
- (C) A written demand made under this paragraph by an elected official shall be effective for four years, regardless of whether or not the official's term has expired prior to the end of the four-year period.
- (D) (i) A person, business, or association that receives the written demand of an elected or appointed official pursuant to this paragraph shall remove the official's home address or telephone number from public display on the Internet, including information provided to cellular telephone applications, within 48 hours of delivery of the written demand, and shall continue to ensure that this information is not reposted on the same Internet Website, subsidiary site, or any other Internet Website maintained by the recipient of the written demand.
- (ii) After receiving the elected or appointed official's written demand, the person, business, or association shall not transfer the appointed or elected official's home address or telephone number to any other person, business, or association through any other medium.
- (iii) Clause (ii) shall not be deemed to prohibit a telephone corporation, as defined in Section 234 of the Public Utilities Code, or its affiliate, from transferring the

elected or appointed official's home address or telephone number to any person, business, or association, if the transfer is authorized by federal or state law, regulation, order, or tariff, or necessary in the event of an emergency, or to collect a debt owed by the elected or appointed official to the telephone corporation or its affiliate.

- (E) For purposes of this paragraph, "publicly post" or "publicly display" means to intentionally communicate or otherwise make available to the general public.
- (2) An official whose home address or telephone number is made public as a result of a violation of paragraph (1) may bring an action seeking injunctive or declarative relief in any court of competent jurisdiction. If a court finds that a violation has occurred, it may grant injunctive or declarative relief and shall award the official court costs and reasonable attorney's fees. A fine not exceeding one thousand dollars (\$1,000) may be imposed for a violation of the court's order for an injunction or declarative relief obtained pursuant to this paragraph.
- (3) An elected or appointed official may designate in writing the official's employer, a related governmental entity, or any voluntary professional association of similar officials to act, on behalf of that official, as that official's agent with regard to making a written demand pursuant to this section. In the case of an appointed official who is a peace officer, as defined in Section 830 to 830.65, inclusive, of the Penal Code, a District Attorney, or a Deputy District Attorney, that official may also designate his or her recognized collective bargaining representative to make a written demand on his or her behalf pursuant to this section. A written demand made by an agent pursuant to this paragraph shall include a statement describing a threat or fear for the safety of that official or of any person residing at the official's home address.
- (d) (1) No person, business, or association shall solicit, sell, or trade on the Internet the home address or telephone number of an elected or appointed official with the intent to cause imminent great bodily harm to the official or to any person residing at the official's home address.
- (2) Notwithstanding any other law, an official whose home address or telephone number is solicited, sold, or traded in violation of

paragraph (1) may bring an action in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, it shall award damages to that official in an amount up to a maximum of three times the actual damages but in no case less than four thousand dollars (\$4,000).

- (e) An interactive computer service or access software provider, as defined in Section 230(f) of Title 47 of the United States Code, shall not be liable under this section unless the service or provider intends to abet or cause imminent great bodily harm that is likely to occur or threatens to cause imminent great bodily harm to an elected or appointed official.
- (f) (For purposes of this section, "elected or appointed official" includes, but is not limited to, all of the following:
  - (1) State constitutional officers.
  - (2) Members of the Legislature.
  - (3) Judges and court commissioners.
  - (4) District attorneys.
  - (5) Public defenders.
  - (6) Members of a City council.
  - (7) Members of a board of supervisors.
  - (8) Appointees of the Governor.
  - (9) Appointees of the Legislature.
  - (10) Mayors.
  - (11) City attorneys.
  - (12) Police chiefs and sheriffs.
  - (13) A public safety official as defined in Section 6254.24.
  - (14) State administrative law judges.
  - (15) Federal judges and federal defenders.
  - (16) Members of the United States Congress and appointees of the President.

- (g) Nothing in this section is intended to preclude punishment instead under Sections 69, 76, or 422 of the Penal Code, or any other provision of law.

### **Section 6254.22. Records of certain health plans**

Nothing in this chapter or any other provision of law shall require the disclosure of records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulae or calculations for these payments, and contract negotiations with providers of health care for alternative rates for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption. The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Managed Health Care in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

### **Section 6254.23. Disclosure of risk assessment or railroad infrastructure protections program**

Nothing in this chapter or any other provision of law shall require the disclosure of a risk assessment or railroad infrastructure protection program filed with the Public Utilities Commission, the Director of Homeland Security, and the Office of Emergency Services pursuant to Article 7.3 (commencing with Section 7665) of Chapter 1 of Division 4 of the Public Utilities Code.

### **Section 6254.24. “Public safety official” defined**

As used in this chapter, “public safety official” means the following parties, whether active or retired:

- (a) A peace officer as defined in Sections 830 to 830.65, inclusive, of the Penal Code, or a person who is not a peace officer, but may exercise the powers of arrest during the course and within the scope of their employment pursuant to Section 830.7 of the Penal Code.

- (b) A public officer or other person listed in Sections 1808.2 and 1808.6 of the Vehicle Code.
- (c) An “elected or appointed official” as defined in subdivision (f) of Section 6254.21.
- (d) An attorney employed by the Department of Justice, the State Public Defender, or a county office of the district attorney or public defender, the United States Attorney, or the Federal Public Defender.
- (e) A City attorney and an attorney who represent cities in criminal matters.
- (f) An employee of the Department of Corrections and Rehabilitation who supervises inmates or is required to have a prisoner in his or her care or custody.
- (g) A sworn or nonsworn employee who supervises inmates in a City police department, a county sheriff's office, the Department of the California Highway Patrol, federal, state, or a local detention facility, and a local juvenile hall, camp, ranch, or home, and a probation officer as defined in Section 830.5 of the Penal Code.
- (h) A federal prosecutor, a federal criminal investigator, and a National Park Service Ranger working in California.
- (i) The surviving spouse or child of a peace officer defined in Section 830 of the Penal Code, if the peace officer died in the line of duty.
- (j) State and federal judges and court commissioners.
- (k) An employee of the Attorney General, a district attorney, or a public defender who submits verification from the Attorney General, district attorney, or public defender that the employee represents the Attorney General, district attorney, or public defender in matters that routinely place that employee in personal contact with persons under investigation for, charged with, or convicted of, committing criminal acts.
- (l) A nonsworn employee of the Department of Justice or a police department or sheriff's office that, in the course of his or her employment, is responsible for collecting, documenting, and preserving physical evidence at crime scenes, testifying in court as an expert witness, and other technical duties, and a nonsworn employee that, in the course of his or her employment, performs a variety of standardized and advanced laboratory procedures in the examination of physical crime evidence, determines their results, and provides expert testimony in court.

**Section 6254.25. Memorandum from legal counsel to state body or local agency; pending litigation**

Nothing in this chapter or any other provision of law shall require the disclosure of a memorandum submitted to a state body or to the legislative body of a local agency by its legal counsel pursuant to subdivision (q) of Section 11126 or Section 54956.9 until the pending litigation has been finally adjudicated or otherwise settled. The memorandum shall be protected by the attorney work-product privilege until the pending litigation has been finally adjudicated or otherwise settled.

**Section 6254.26. Alternative investments of public investment funds; records exempt from disclosure**

- (a) Notwithstanding any provision of this chapter or other law, the following records regarding alternative investments in which public investment funds invest shall not be subject to disclosure pursuant to this chapter, unless the information has already been publicly released by the keeper of the information:
  - (1) Due diligence materials that are proprietary to the public investment fund or the alternative investment vehicle.
  - (2) Quarterly and annual financial statements of alternative investment vehicles.
  - (3) Meeting materials of alternative investment vehicles.
  - (4) Records containing information regarding the portfolio positions in which alternative investment funds invest.
  - (5) Capital call and distribution notices.
  - (6) Alternative investment agreements and all related documents.
- (b) Notwithstanding subdivision (a), the following information contained in records described in subdivision (a) regarding alternative investments in which public investment funds invest shall be subject to disclosure pursuant to this chapter and shall not be considered a trade secret exempt from disclosure:
  - (1) The name, address, and vintage year of each alternative investment vehicle.
  - (2) The dollar amount of the commitment made to each alternative investment vehicle by the public investment fund since inception.

- (3) The dollar amount of cash contributions made by the public investment fund to each alternative investment vehicle since inception.
  - (4) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund from each alternative investment vehicle.
  - (5) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund plus remaining value of partnership assets attributable to the public investment fund's investment in each alternative investment vehicle.
  - (6) The net internal rate of return of each alternative investment vehicle since inception.
  - (7) The investment multiple of each alternative investment vehicle since inception.
  - (8) The dollar amount of the total management fees and costs paid on an annual fiscal yearend basis, by the public investment fund to each alternative investment vehicle.
  - (9) The dollar amount of cash profit received by public investment funds from each alternative investment vehicle on a fiscal year-end basis.
- (c) For purposes of this section, the following definitions shall apply:
- (1) "Alternative investment" means an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.
  - (2) "Alternative investment vehicle" means the limited partnership, limited liability company, or similar legal structure through which the public investment fund invests in portfolio companies.
  - (3) "Portfolio positions" means individual portfolio investments made by the alternative investment vehicles.
  - (4) "Public investment fund" means any public pension or retirement system, and any public endowment or foundation.

**Section 6254.27. Disclosure of official records not required if public record available; county recorder**

Nothing in this chapter shall be construed to require the disclosure by a county recorder of any "official record" if a "public record" version of that record is available pursuant to Article 3.5 (commencing with Section 27300) of Chapter 6 of Part 3 of Division 2 of Title 3.

**Section 6254.28. Disclosure of official records not required if public record available; filing office**

Nothing in this chapter shall be construed to require the disclosure by a filing office of any "official record" if a "public record" version of that record is available pursuant to Section 9526.5 of the Commercial Code.

**Section 6254.29. Legislative intent; protection of social security numbers**

- (a) It is the intent of the Legislature that, in order to protect against the risk of identity theft, local agencies shall redact social security numbers from records before disclosing them to the public pursuant to this chapter.
- (b) Nothing in this chapter shall be construed to require a local agency to disclose a social security number.
- (c) This section shall not apply to records maintained by a county recorder.

**Section 6254.30. Disclosure of information by law enforcement agencies to victim or victim's authorized representative**

A state or local law enforcement agency shall not require a victim of an incident, or an authorized representative thereof, to show proof of the victim's legal presence in the United States in order to obtain the information required to be disclosed by that law enforcement agency pursuant to subdivision (f) of Section 6254. However, if, for identification purposes, a state or local law enforcement agency requires identification in order for a victim of an incident, or an authorized representative thereof, to obtain that information, the agency shall, at a minimum, accept a current driver's license or identification card issued by any state in the United States, a current passport issued by the United States or a foreign government with which the United States has a diplomatic relationship, or a current Matricula Consular card.

**Section 6254.33 Vendors and contractors; disclosure of identification number, alphanumeric character, or other unique identifying code used by public agency**

Nothing in this chapter shall require the disclosure of an identification number, alphanumeric character, or other unique identifying code that a public agency uses to identify a vendor or contractor, or an affiliate of a vendor or contractor, unless the identification number, alphanumeric character, or other unique identifying code is used in a public bidding or an audit involving the public agency.

**Section 6255. Justification for withholding of records**

- (a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.
- (b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

**Section 6257.5. Purpose of request for disclosure; effect**

This chapter does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.

**Section 6258. Proceedings to enforce right to inspect or to receive copy of record**

Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

**Section 6259. Order of court; review; contempt; court costs and attorney fees**

- (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of

the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

- (b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.
- (c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.
- (d) The court shall award court costs and reasonable attorney fees to the requester should the requester prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the requester's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.
- (e) Nothing in this section shall be construed to limit a requestor's right to obtain fees and costs pursuant to subdivision (d) or pursuant to any other law.

**Section 6260. Effect of chapter on prior rights and proceedings**

The provisions of this chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state, nor to limit or impair any rights of discovery in a criminal case.

**Section 6261. Itemized statement of total expenditures and disbursement of any agency**

Notwithstanding Section 6252, an itemized statement of the total expenditures and disbursement of any agency provided for in Article VI of the California Constitution shall be open for inspection.

**Section 6262. Exemption of records of complaints to, or investigations by, any state or local agency for licensing purposes; application to district attorney**

The exemption of records of complaints to, or investigations conducted by, any state or local agency for licensing purposes under subdivision (f) of Section 6254 shall not apply when a request for inspection of such records is made by a district attorney.

**Section 6263. District attorney; inspection or copying of nonexempt public records**

A state or local agency shall allow an inspection or copying of any public record or class of public records not exempted by this chapter when requested by a district attorney.

**Section 6264. Order to allow district attorney to inspect or copy records**

The district attorney may petition a court of competent jurisdiction to require a state or local agency to allow him to inspect or receive a copy of any public record or class of public records not exempted by this chapter when the agency fails or refuses to allow inspection or copying within 10 working days of a request. The court may require a public agency to permit inspection or copying by the district attorney unless the public interest or good cause in withholding such records clearly outweighs the public interest in disclosure.

**Section 6265. Disclosure of records to district attorney; status of records**

Disclosure of records to a district attorney under the provisions of this chapter shall effect no change in the status of the records under any other provision of law.

**Section 6267. Confidentiality of patron use records of any library supported by public funds; Exceptions; "Patron use records"**

All patron use records of any library which is in whole or in part supported by public funds shall remain confidential and shall not be disclosed by a public agency, or private actor that maintains or stores patron use records on behalf of a public agency, to any person, local agency, or state agency except as follows:

- (a) By a person acting within the scope of his or her duties within the administration of the library.
- (b) By a person authorized, in writing, by the individual to whom the records pertain, to inspect the records.
- (c) By order of the appropriate superior court.

As used in this section, the term "patron use records" includes the following:

Any written or electronic record, that is used to identify the patron, including, but not limited to, a patron's name, address, telephone number, or e-mail address, that a library patron provides in order to become eligible to borrow or use books and other materials.

Any written record or electronic transaction that identifies a patron's borrowing information or use of library information resources, including, but not limited to, database search records, borrowing records, class records, and any other personally identifiable uses of library resources information requests, or inquiries.

This section shall not apply to statistical reports of patron use nor to records of fines collected by the library.

**Section 6268. Public records in custody or control of Governor leaving office; transfer to state archives; restriction on public access; conditions**

Public records, as defined in Section 6252, in the custody or control of the Governor when he or she leaves office, either voluntarily or involuntarily, shall, as soon as is practical, be transferred to the State Archives. Notwithstanding any other provision of law, the Governor, by written instrument, the terms of which shall be made public, may restrict public access to any of the transferred public records, or any other writings he or she may transfer, which have not already been made accessible to the public. With respect to public records, public access, as otherwise provided for by this chapter, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later,

nor shall there be any restriction whatsoever with respect to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition in cases which have been closed for a period of at least 25 years. Subject to any restrictions permitted by this section, the Secretary of State, as custodian of the State Archives, shall make all such public records and other writings available to the public as otherwise provided for in this chapter.

Except as to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition, this section shall not apply to public records or other writings in the direct custody or control of any Governor who held office between 1974 and 1988 at the time of leaving office, except to the extent that that Governor may voluntarily transfer those records or other writings to the State Archives.

Notwithstanding any other provision of law, the public records and other writings of any Governor who held office between 1974 and 1988 may be transferred to any educational or research institution in California provided that with respect to public records, public access, as otherwise provided for by this chapter, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later. No records or writings may be transferred pursuant to this paragraph unless the institution receiving them agrees to maintain, and does maintain, the materials according to commonly accepted archival standards. No public records transferred shall be destroyed by that institution without first receiving the written approval of the Secretary of State, as custodian of the State Archives, who may require that the records be placed in the State Archives rather than being destroyed. An institution receiving those records or writings shall allow the Secretary of State, as custodian of the State Archives, to copy, at state expense, and to make available to the public, any and all public records, and inventories, indices, or finding aids relating to those records, which the institution makes available to the public generally. Copies of those records in the custody of the State Archives shall be given the same legal effect as is given to the originals.

**Section 6268.5      Records subject to Section 6268; determination whether appropriate for preservation in State Archives; professional archival practices**

The Secretary of State may appraise and manage new or existing records that are subject to Section 6268 to determine whether the records are appropriate for preservation in the State Archives. For purposes of this section, the Secretary of State shall use professional archival practices, including, but not limited to, appraising the historic value of the records, arranging and describing the records, rehousing the records in appropriate storage containers, or providing any conservation treatment that the records require.

**Section 6270. Sale, exchange or otherwise providing records subject to disclosure to private entities; prohibition; exception**

- (a) Notwithstanding any other provision of law, no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this chapter. Nothing in this section requires a state or local agency to use the State Printer to print public records. Nothing in this section prevents the destruction of records pursuant to law.
- (b) This section shall not apply to contracts entered into prior to January 1, 1996, between the County of Santa Clara and a private entity for the provision of public records subject to disclosure under this chapter.

**Section 6270.5 Catalog of enterprise systems; local agency requirements; posting; disclosures; effect on public inspection rights**

- (a) In implementing this chapter, each local agency, except a local educational agency, shall create a catalog of enterprise systems. The catalog shall be made publicly available upon request in the office of the person or officer designated by the agency's legislative body. The catalog shall be posted in a prominent location on the local agency's Internet Web site, if the agency has an Internet Web site. The catalog shall disclose a list of the enterprise systems utilized by the agency and, for each system, shall also disclose all of the following:
  - (1) Current system vendor.
  - (2) Current system product.
  - (3) A brief statement of the system's purpose.
  - (4) A general description of categories or types of data.
  - (5) The department that serves as the system's primary custodian.
  - (6) How frequently system data is collected.
  - (7) How frequently system data is updated.
- (b) This section shall not be interpreted to limit a person's right to inspect public records pursuant to this chapter.

- (c) For purposes of this section:
- (1) "Enterprise system" means a software application or computer system that collects, stores, exchanges, and analyzes information that the agency uses that is both of the following:
    - (A) A multidepartmental system or a system that contains information collected about the public.
    - (B) A system of record.
  - (2) "System of record" means a system that serves an original source of data within an agency.
  - (3) An enterprise system shall not include any of the following:
    - (A) Information technology security systems, including firewalls and other cybersecurity systems.
    - (B) Physical access control systems, employee identification management systems, video monitoring, and other physical control systems.
    - (C) Infrastructure and mechanical control systems, including those that control or manage street lights, electrical, natural gas, or water or sewer functions.
    - (E) Systems related to 911 dispatch and operation or emergency services.
    - (F) Systems that would be restricted from disclosure pursuant to Section 6254.19.
    - (G) The specific records that the information technology system collects, stores, exchanges, or analyzes.
- (d) Nothing in this section shall be construed to permit public access to records held by an agency to which access is otherwise restricted by statute or to alter the process for requesting public records, as set forth in this chapter.
- (e) If, on the facts of the particular case, the public interest served by not disclosing the information described in paragraph (1) or (2) of subdivision (a) clearly outweighs the public interest served by disclosure of the record, the local agency may instead provide a system name, brief title, or identifier of the system.

- (f) The local agency shall complete and post the catalog required by this section by July 1, 2016, and thereafter shall update the catalog annually.

## **ARTICLE 2 – OTHER EXEMPTIONS FROM DISCLOSURE CALIFORNIA GOVERNMENT CODE SECTIONS 6275-6276.48**

### **Section 6275. Legislative intent; effect of listing in article**

It is the intent of the Legislature to assist members of the public and state and local agencies in identifying exemptions to the California Public Records Act. It is the intent of the Legislature that, after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to subdivision (k) of Section 6254 shall be listed and described in this article pursuant to a bill authorized by a standing committee of the Legislature to be introduced during the first year of each session of the Legislature. The statutes and constitutional provisions listed in this article may operate to exempt certain records, or portions thereof, from disclosure. The statutes and constitutional provisions listed and described may not be inclusive of all exemptions. The listing of a statute or constitutional provision in this article does not itself create an exemption. Requesters of public records and public agencies are cautioned to review the applicable statute or constitutional provision to determine the extent to which it, in light of the circumstances surrounding the request, exempts public records from disclosure.

### **Section 6276. Records or information not required to be disclosed**

Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

#### **Section 6276.01. “Crime victims”**

Crime victims, confidential information or records, The Victims' Bill of Rights Act of 2008: Marsy's Law, Section 28 of Article I of the California Constitution.

#### **Section 6276.02. “Acquired Immune Deficiency Syndrome” through “Advance Health Care Directive Registry”**

Acquired Immune Deficiency Syndrome, blood test subject, compelling identity of, Section 120975, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of personal data of patients in State Department of Public Health programs, Section 120820, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of research records, Sections 121090, 121095, 121115, and 121120, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of vaccine volunteers, Section 121280, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of information obtained in prevention programs at correctional facilities and law enforcement agencies, Sections 7552 and 7554, Penal Code.

Acquired Immune Deficiency Syndrome, confidentiality of test results of person convicted of prostitution, Section 1202.6, Penal Code.

Acquired Immune Deficiency Syndrome, disclosure of results of HIV test, penalties, Section 120980, Health and Safety Code.

Acquired Immune Deficiency Syndrome, personal information, insurers tests, confidentiality of, Section 799, Insurance Code.

Acquired Immune Deficiency Syndrome, public safety and testing disclosure, Sections 121065 and 121070, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, production or discovery of records for use in criminal or civil proceedings against subject prohibited, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Public Health Records Confidentiality Act, personally identifying information confidentiality, Section 121025, Health and Safety Code.

Acquired Immune Deficiency Syndrome, test of criminal defendant pursuant to search warrant requested by victim, confidentiality of, Section 1524.1, Penal Code.

Acquired Immune Deficiency Syndrome, test results, disclosure to patient's spouse and others, Section 121015, Health and Safety Code.

Acquired Immune Deficiency Syndrome, test of person under Youth Authority, disclosure of results, Section 1768.9, Welfare and Institutions Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, financial audits or program evaluations, Section 121085, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, violations, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, personally identifying research records not to be disclosed, Section 121075, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, permittee disclosure, Section 121080, Health and Safety Code.

Administrative procedure, adjudicatory hearings, interpreters, Section 11513.

Adoption records, confidentiality of, Section 102730, Health and Safety Code.

Advance Health Care Directive Registry, exemption from disclosure for registration information provided to the Secretary of State, subdivision (ac), Section 6254.

**Section 6276.04. “Aeronautics Act” through “Avocado handler transaction records”**

Aeronautics Act, reports of investigations and hearings, Section 21693, Public Utilities Code.

Agricultural producers marketing, access to records, Section 59616, Food and Agricultural Code.

Aiding disabled voters, Section 14282, Elections Code.

Air pollution data, confidentiality of trade secrets, Section 6254.7, and Sections 42303.2 and 43206, Health and Safety Code.

Air toxics emissions inventory plans, protection of trade secrets, Section 44346, Health and Safety Code.

Alcohol and drug abuse records and records of communicable diseases, confidentiality of, Section 123125, Health and Safety Code.

Alcoholic beverage licensees, confidentiality of corporate proprietary information, Section 25205, Business and Professions Code.

Ambulatory Surgery Data Record, confidentiality of identifying information, Section 128737, Health and Safety Code.

Apiary registration information, confidentiality of, Section 29041, Food and Agricultural Code.

Archaeological site information and reports maintained by state and local agencies, disclosure not required, Section 6254.10.

Arrest not resulting in conviction, disclosure or use of records, Sections 432.7 and 432.8, Labor Code.

Arsonists, registered, confidentiality of certain information, Section 457.1, Penal Code.

Artificial insemination, donor not natural father, confidentiality of records, Section 7613, Family Code.

Assessor's records, confidentiality of information in, Section 408, Revenue and Taxation Code.

Assessor's records, confidentiality of information in, Section 451, Revenue and Taxation Code.

Assessor's records, display of documents relating to business affairs or property of another, Section 408.2, Revenue and Taxation Code.

Assigned risk plans, rejected applicants, confidentiality of information, Section 11624, Insurance Code.

Attorney applicant, investigation by State Bar, confidentiality of, Section 6060.2, Business and Professions Code.

Attorney applicant, information submitted by applicant and State Bar admission records, confidentiality of, Section 6060.25, Business and Professions Code.

Attorney-client confidential communication, Section 6068, Business and Professions Code, and Sections 952 and 954, Evidence Code.

Attorney, disciplinary proceedings, confidentiality prior to formal proceedings, Section 6086.1, Business and Professions Code.

Attorney, disciplinary proceeding, State Bar access to nonpublic court records, Section 6090.6, Business and Professions Code.

Attorney, law corporation, investigation by State Bar, confidentiality of, Section 6168, Business and Professions Code.

Attorney work product confidentiality in administrative adjudication, Section 11507.6.

Attorney, work product, confidentiality of, Section 6202, Business and Professions Code.

Attorney work product, discovery, Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure.

Auditor General, access to records for audit purposes, Sections 10527 and 10527.1.

Auditor General, disclosure of audit records, Section 10525.

Automated forward facing parking control devices, confidentiality of video imaging records from the devices, Section 40240, Vehicle Code.

Automated traffic enforcement system, confidentiality of photographic records made by the system, Section 21455.5, Vehicle Code.

Automobile Insurance Claims Depository, confidentiality of information, Section 1876.3, Insurance Code.

Automobile insurance, investigation of fraudulent claims, confidential information, Section 1872.8, Insurance Code.

Avocado handler transaction records, confidentiality of information, Section 44984, Food and Agricultural Code.

**Section 6276.06. “Bank and Corporation Tax” through “Business and professions licensee exemption for social security number”**

Bank and Corporation Tax, disclosure of information, Article 2 (commencing with Section 19542), Chapter 7, Part 10.2, Division 2, Revenue and Taxation Code.

Bank employees, confidentiality of criminal history information, Sections 777.5 and 4990, Financial Code.

Bank reports, confidentiality of, Section 289, Financial Code.

Basic Property Insurance Inspection and Placement Plan, confidential reports, Section 10097, Insurance Code.

Beef Council of California, confidentiality of fee transactions information, Section 64691.1, Food and Agricultural Code.

Bids, confidentiality of, Section 10304, Public Contract Code.

Birth, death, and marriage licenses, confidential information contained in, Sections 02100, 102110, and 102230, Health and Safety Code.

Birth defects, monitoring, confidentiality of information collected, Section 103850, Health and Safety Code.

Birth, live, confidential portion of certificate, Sections 102430, 102475, 103525, and 103590, Health and Safety Code.

Blood tests, confidentiality of hepatitis and AIDS carriers, Section 1603.1, Health and Safety Code.

Blood-alcohol percentage test results, vehicular offenses, confidentiality of, Section 1804, Vehicle Code.

Business and professions licensee exemption for social security number, Section 30, Business and Professions Code.

**Section 6276.08. “Cable television subscriber information” through “California Wine Grape Commission”**

Cable television subscriber information, confidentiality of, Section 637.5, Penal Code.

CalFresh, disclosure of information, Section 18909, Welfare and Institutions Code.

California AIDS Program, personal data, confidentiality, Section 120820, Health and Safety Code.

California Apple Commission, confidentiality of lists of persons, Section 75598, Food and Agricultural Code.

California Apple Commission, confidentiality of proprietary information from producers or handlers, Section 75633, Food and Agricultural Code.

California Asparagus Commission, confidentiality of lists of producers, Section 78262, Food and Agricultural Code.

California Asparagus Commission, confidentiality of proprietary information from producers, Section 78288, Food and Agricultural Code.

California Avocado Commission, confidentiality of information from handlers, Section 67094, Food and Agricultural Code.

California Avocado Commission, confidentiality of proprietary information from handlers, Section 67104, Food and Agricultural Code.

California Cherry Commission, confidentiality of proprietary information from producers, processors, shippers, or grower-handlers, Section 76144, Food and Agricultural Code.

California Children's Services Program, confidentiality of factor replacement therapy contracts, Section 123853, Health and Safety Code.

California Cut Flower Commission, confidentiality of lists of producers, Section 77963, Food and Agricultural Code.

California Cut Flower Commission, confidentiality of proprietary information from producers, Section 77988, Food and Agricultural Code.

California Date Commission, confidentiality of proprietary information from producers and grower-handlers, Section 77843, Food and Agricultural Code.

California Egg Commission, confidentiality of proprietary information from handlers or distributors, Section 75134, Food and Agricultural Code.

California Forest Products Commission, confidentiality of lists of persons, Section 77589, Food and Agricultural Code.

California Forest Products Commission, confidentiality of proprietary information from producers, Section 77624, Food and Agricultural Code.

California Iceberg Lettuce Commission, confidentiality of information from handlers, Section 66624, Food and Agricultural Code.

California Kiwifruit Commission, confidentiality of proprietary information from producers or handlers, Section 68104, Food and Agricultural Code.

California Navel Orange Commission, confidentiality of proprietary information from producers or handlers and lists of producers and handlers, Section 73257, Food and Agricultural Code.

California Pepper Commission, confidentiality of lists of producers and handlers, Section 77298, Food and Agricultural Code.

California Pepper Commission, confidentiality of proprietary information from producers or handlers, Section 77334, Food and Agricultural Code.

California Pistachio Commission, confidentiality of proprietary information from producers or processors, Section 69045, Food and Agricultural Code.

California Salmon Commission, confidentiality of fee transactions records, Section 76901.5, Food and Agricultural Code.

California Salmon Commission, confidentiality of request for list of commercial salmon vessel operators, Section 76950, Food and Agricultural Code.

California Seafood Council, confidentiality of fee transaction records, Section 78553, Food and Agricultural Code.

California Seafood Council, confidentiality of information on volume of fish landed, Section 78575, Food and Agricultural Code.

California Sheep Commission, confidentiality of proprietary information from producers or handlers and lists of producers, Section 76343, Food and Agricultural Code.

California State University contract law, bids, questionnaires and financial statements, Section 10763, Public Contract Code.

California State University Investigation of Reported Improper Governmental Activities Act, confidentiality of investigative audits completed pursuant to the act, Section 89574, Education Code.

California Table Grape Commission, confidentiality of information from shippers, Section 65603, Food and Agricultural Code.

California Tomato Commission, confidentiality of lists of producers, handlers, and others, Section 78679, Food and Agricultural Code.

California Tomato Commission, confidentiality of proprietary information, Section 78704, Food and Agricultural Code.

California Tourism Marketing Act, confidentiality of information pertaining to businesses paying the assessment under the act, Section 13995.54.

California Victim Compensation and Government Claims Board, disclosure not required of records relating to assistance requests under Article 1 (commencing with Section 13950) of Chapter 5 of Part 4 of Division 3 of Title 2, Section 6254.17.

California Walnut Commission, confidentiality of lists of producers, Section 77101, Food and Agricultural Code.

California Walnut Commission, confidentiality of proprietary information from producers or handlers, Section 77154, Food and Agricultural Code.

California Wheat Commission, confidentiality of proprietary information from handlers and lists of producers, Section 72104, Food and Agricultural Code.

California Wheat Commission, confidentiality of requests for assessment refund, Section 72109, Food and Agricultural Code.

California Wine Commission, confidentiality of proprietary information from producers or vintners, Section 74655, Food and Agricultural Code.

California Wine Grape Commission, confidentiality of proprietary information from producers and vintners, Section 74955, Food and Agricultural Code.

**Section 6276.10. “Cancer registries” through “Community college employee”**

Cancer registries, confidentiality of information, Section 103885, Health and Safety Code.

Candidate for local nonpartisan elective office, confidentiality of ballot statement, Section 13311, Elections Code.

Child abuse information, exchange by multidisciplinary personnel teams, Section 830, Welfare and Institutions Code.

Child abuse report and those making report, confidentiality of, Sections 11167 and 11167.5, Penal Code.

Child care liability insurance, confidentiality of information, Section 1864, Insurance Code.

Child concealer, confidentiality of address, Section 278.7, Penal Code.

Child custody investigation report, confidentiality of, Section 3111, Family Code.

Child day care facility, nondisclosure of complaint, Section 1596.853, Health and Safety Code.

Child health and disability prevention, confidentiality of health screening and evaluation results, Section 124110, Health and Safety Code.

Child sexual abuse reports, confidentiality of reports filed in a contested proceeding involving child custody or visitation rights, Section 3118, Family Code.

Child support, confidentiality of income tax return, Section 3552, Family Code.

Child support, promise to pay, confidentiality of, Section 7614, Family Code.

Childhood lead poisoning prevention, confidentiality of blood lead findings, Section 124130, Health and Safety Code.

Children and families commission, local, confidentiality of individually identifiable information, Section 130140.1, Health and Safety Code.

Cigarette tax, confidential information, Section 30455, Revenue and Taxation Code.

Civil actions, delayed disclosure for 30 days after complaint filed, Section 482.050, Code of Civil Procedure.

Closed sessions, document assessing vulnerability of state or local agency to disruption by terrorist or other criminal acts, subdivision (aa), Section 6254.

Closed sessions, meetings of local governments, pending litigation, Section 54956.9.

Colorado River Board, confidential information and records, Section 12519, Water Code.

Commercial fishing licensee, confidentiality of records, Section 7923, Fish and Game Code.

Commercial fishing reports, Section 8022, Fish and Game Code.

Community care facilities, confidentiality of client information, Section 1557.5, Health and Safety Code.

Community college employee, candidate examination records, confidentiality of, Section 88093, Education Code.

Community college employee, notice and reasons for nonreemployment, confidentiality, Section 87740, Education Code.

**Section 6276.12. “Conservatee” through “Customer list of telephone answering service”**

Conservatee, confidentiality of the conservatee's report, Section 1826, Probate Code.

Conservatee, estate plan of, confidentiality of, Section 2586, Probate Code.

Conservatee with disability, confidentiality of report, Section 1827.5, Probate Code.

Conservator, confidentiality of conservator's birthdate and driver's license number, Section 1834, Probate Code.

Conservator, supplemental information, confidentiality of, Section 1821, Probate Code.

Conservatorship, court review of, confidentiality of report, Section 1851, Probate Code.

Consumer fraud investigations, access to complaints and investigations, Section 26509.

Consumption or utilization of mineral materials, disclosure of, Section 2207.1, Public Resources Code.

Contractor, evaluations and contractor responses, confidentiality of, Section 10370, Public Contract Code.

Contractor, license applicants, evidence of financial solvency, confidentiality of, Section 7067.5, Business and Professions Code.

Controlled Substance Law violations, confidential information, Section 818.7.

Controlled substance offenders, confidentiality of registration information, Section 11594, Health and Safety Code.

Cooperative Marketing Association, confidential information disclosed to conciliator, Section 54453, Food and Agricultural Code.

Coroner, inquests, subpoena duces tecum, Section 27491.8.

County aid and relief to indigents, confidentiality of investigation, supervision, relief, and rehabilitation records, Section 17006, Welfare and Institutions Code.

County alcohol programs, confidential information and records, Section 11812, Health and Safety Code.

County Employees' Retirement, confidential statements and records, Section 31532.

County mental health system, confidentiality of client information, Section 5610, Welfare and Institutions Code.

County social services, investigation of applicant, confidentiality, Section 18491, Welfare and Institutions Code.

County social services rendered by volunteers, confidentiality of records of recipients, Section 10810, Welfare and Institutions Code.

County special commissions, disclosure of health care peer review and quality assessment records not required, Section 14087.58, Welfare and Institutions Code.

County special commissions, disclosure of records relating to the commission's rates of payment for publicly assisted medical care not required, Section 14087.58, Welfare and Institutions Code.

Court files, access to, restricted for 60 days, Section 1161.2, Code of Civil Procedure.

Court files, access to, restricted for 60 days, Section 1708.85, Civil Code.

Court reporters, confidentiality of records and reporters, Section 68525.

Court-appointed special advocates, confidentiality of information acquired or reviewed, Section 105, Welfare and Institutions Code.

Crane employers, previous business identities, confidentiality of, Section 7383, Labor Code.

Credit unions, confidentiality of investigation and examination reports, Section 14257, Financial Code.

Credit unions, confidentiality of employee criminal history information, Section 14409.2, Financial Code.

Criminal defendant, indigent, confidentiality of request for funds for investigators and experts, Section 987.9, Penal Code.

Criminal offender record information, access to, Sections 11076 and 13202, Penal Code.

Crop reports, confidential, subdivision (e), Section 6254.

Customer list of chemical manufacturers, formulators, suppliers, distributors, importers, and their agents, the quantities and dates of shipments, and the proportion of a specified chemical within a mixture, confidential, Section 147.2, Labor Code.

Customer list of employment agency, trade secret, Section 16607, Business and Professions Code.

Customer list of telephone answering service, trade secret, Section 16606, Business and Professions Code.]

**Section 6276.14. “Dairy Council of California” through “Driving school and driving instructor licensee record”**

Dairy Council of California, confidentiality of ballots, Section 64155, Food and Agricultural Code.

Death, report that physician's or podiatrist's negligence or incompetence may be cause, confidentiality of, Section 802.5, Business and Professions Code.

Dental hygienist drug and alcohol diversion program, confidentiality of records pertaining to treatment, Section 1966.5, Business and Professions Code.

Dentist advertising and referral contract exemption, Section 650.2, Business and Professions Code.

Dentist, alcohol or dangerous drug rehabilitation and diversion, confidentiality of records, Section 1698, Business and Professions Code.

Department of Consumer Affairs licensee exemption for alcohol or dangerous drug treatment and rehabilitation records, Section 156.1, Business and Professions Code.

Department of Motor Vehicles, confidentiality of information provided by an insurer, Section 4750.4, Vehicle Code.

Department of Motor Vehicles, confidentiality of the home address of specified persons in the records of the Department of Motor Vehicles, Section 1808.6, Vehicle Code.

Developmentally disabled conservatee confidentiality of reports and records, Sections 416.8 and 416.18, Health and Safety Code.

Developmentally disabled person, access to information provided by family member, Section 4727, Welfare and Institutions Code.

Developmentally disabled person and person with mental illness, access to and release of information about, by protection and advocacy agency, Section 4903, Welfare and Institutions Code.

Developmentally disabled person, confidentiality of patient records, state agencies, Section 4553, Welfare and Institutions Code.

Developmentally disabled person, confidentiality of records and information, Sections 4514 and 4518, Welfare and Institutions Code.

Diesel Fuel Tax information, disclosure prohibited, Section 60609, Revenue and Taxation Code.

Disability compensation, confidential medical records, Section 2714, Unemployment Insurance Code.

Disability insurance, access to registered information, Section 789.7, Insurance Code.

Discrimination complaint to Division of Labor Standards Enforcement, confidentiality of witnesses, Section 98.7, Labor Code.

Dispute resolution participants confidentiality, Section 471.5, Business and Professions Code.

Division of Workers' Compensation, confidentiality of data obtained by the administrative director and derivative works created by the division, Sections 3201.5, 3201.7, and 3201.9, Labor Code.

Division of Workers' Compensation, individually identifiable information and residence addresses obtained or maintained by the division on workers' compensation claims, confidentiality of, Section 138.7, Labor Code.

Division of Workers' Compensation, individually identifiable information of health care organization patients, confidentiality of, Section 4600.5, Labor Code.

Division of Workers' Compensation, individual workers' compensation claim files and auditor's working papers, confidentiality of, Section 129, Labor Code.

Division of Workers' Compensation, peer review proceedings and employee medical records, confidentiality of, Section 4600.6, Labor Code.

Domestic violence counselor and victim, confidentiality of communication, Sections 1037.2 and 1037.5, Evidence Code.

Driver arrested for traffic violation, notice of reexamination for evidence of incapacity, confidentiality of, Section 40313, Vehicle Code.

Driving school and driving instructor licensee records, confidentiality of, Section 11108, Vehicle Code.

**Section 6276.16. "Educational psychologist-patient" through "Executive Department"**

Educational psychologist-patient, privileged communication, Section 1010.5, Evidence Code.

Electronic and appliance repair dealer, service contractor, financial data in applications, subdivision (x), Section 6254.

Electronic Recording Delivery Act of 2004, exemption from disclosure for computer security reports, Section 27394.

Emergency Care Data Record, exemption from disclosure for identifying information, Section 128736, Health and Safety Code.

Emergency Medical Services Fund, patient named, Section 1797.98c, Health and Safety Code.

Emergency medical technicians, confidentiality of disciplinary investigation information, Section 1798.200, Health and Safety Code.

Emergency Medical Technician-Paramedic (EMT-P), exemption from disclosure for records relating to personnel actions against, or resignation of, an EMT-P for disciplinary cause or reason, Section 1799.112, Health and Safety Code.

Eminent domain proceedings, use of state tax returns, Section 1263.520, Code of Civil Procedure.

Employment agency, confidentiality of customer list, Section 16607, Business and Professions Code.

Employment application, nondisclosure of arrest record or certain convictions, Sections 432.7 and 432.8, Labor Code.

Employment Development Department, furnishing materials, Section 307, Unemployment Insurance Code.

Enteral nutrition products, confidentiality of contracts by the State Department of Health Care Services with manufacturers of enteral nutrition products, Section 14105.8, Welfare and Institutions Code.

Equal wage rate violation, confidentiality of complaint, Section 1197.5, Labor Code.

Equalization, State Board of, prohibition against divulging information, Section 15619.

Escrow Agents' Fidelity Corporation, confidentiality of examination and investigation reports, Section 17336, Financial Code.

Escrow agents' confidentiality of reports on violations, Section 17414, Financial Code.

Escrow agents' confidentiality of state summary criminal history information, Section 17414.1, Financial Code.

Estate tax, confidential records and information, Section 14251, Revenue and Taxation Code.

Excessive rates or complaints, reports, Section 1857.9, Insurance Code.

Executive Department, closed sessions and the record of topics discussed, Sections 11126 and 11126.1.

Executive Department, investigations and hearings, confidential nature of information acquired, Section 11183.

**Section 6276.18. "Family Court" through "Fur dealer licensee"**

Family Court, records, Section 1818, Family Code.

Farm product processor license, confidentiality of financial statements, Section 55523.6, Food and Agricultural Code.

Farm product processor licensee, confidentiality of grape purchases, Section 55601.5, Food and Agricultural Code.

Fee payer information, prohibition against disclosure by Board of Equalization and others, Section 55381, Revenue and Taxation Code.

Financial institutions, issuance of securities, reports and records of state agencies, subdivision (d), Section 6254.

Financial statements of insurers, confidentiality of information received, Section 925.3, Insurance Code.

Financial statements and questionnaires, of prospective bidders for the state, confidentiality of, Section 10165, Public Contract Code.

Financial statements and questionnaires, of prospective bidders for California State University contracts, confidentiality of, Section 10763, Public Contract Code.

Firearms, centralized list of exempted federal firearms licensees, disclosure of information compiled from, Sections 24850 to 24890, inclusive, Penal Code.

Firearms, centralized list of dealers and licensees, disclosure of information compiled from, Sections 26700 to 26915, inclusive, Penal Code.

Firearm license applications, subdivision (u), Section 6254.

Firearm sale or transfer, confidentiality of records, Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part 6, Penal Code.

Fishing and hunting licenses, confidentiality of names and addresses contained in records submitted to the Department of Fish and Game to obtain recreational fishing and hunting licenses, Section 1050.6, Fish and Game Code.

Foreign marketing of agricultural products, confidentiality of financial information, Section 58577, Food and Agricultural Code.

Forest fires, anonymity of informants, Section 4417, Public Resources Code.

Foster homes, identifying information, Section 1536, Health and Safety Code.

Franchise Tax Board, access to Franchise Tax Board information by the State Department of Social Services, Section 11025, Welfare and Institutions Code.

Franchise Tax Board, auditing, confidentiality of, Section 90005.

Franchises, applications, and reports filed with Commissioner of Corporations, disclosure and withholding from public inspection, Section 31504, Corporations Code.

Fur dealer licensee, confidentiality of records, Section 4041, Fish and Game Code.

### **Section 6276.22. “Gambling Control Act” through “Guardianship”**

Gambling Control Act, exemption from disclosure for records of the California Gambling Control Commission and the Department of Justice, Sections 19819 and 19821, Business and Professions Code.

Genetically Handicapped Persons Program, confidentiality of factor replacement therapy contracts, Section 125191, Health and Safety Code.

Governor, correspondence of and to Governor and Governor's office, subdivision (l), Section 6254.

Governor, transfer of public records in control of, restrictions on public access, Section 6268.

Grand jury, confidentiality of request for special counsel, Section 936.7, Penal Code.

Grand jury, confidentiality of transcription of indictment or accusation, Section 938.1, Penal Code.

Group Insurance, public employees, Section 53202.25.

Guardianship, confidentiality of report regarding the suitability of the proposed guardian, Section 1543, Probate Code.

Guardianship, disclosure of report and recommendation concerning proposed guardianship of person or estate, Section 1513, Probate Code.

**Section 6276.24. “Hazardous substance tax information” through “Housing authorities”**

Hazardous substance tax information, prohibition against disclosure, Section 43651, Revenue and Taxation Code.

Hazardous waste control, business plans, public inspection, Section 25506, Health and Safety Code.

Hazardous waste control, notice of unlawful hazardous waste disposal, Section 25180.5, Health and Safety Code.

Hazardous waste control, trade secrets, disclosure of information, Sections 25511 and 25538, Health and Safety Code.

Hazardous waste control, trade secrets, procedures for release of information, Section 25358.2, Health and Safety Code.

Hazardous waste generator report, protection of trade secrets, Sections 25244.21 and 25244.23, Health and Safety Code.

Hazardous waste licenseholder disclosure statement, confidentiality of, Section 25186.5, Health and Safety Code.

Hazardous waste recycling, information clearing house, confidentiality of trade secrets, Section 25170, Health and Safety Code.

Hazardous waste recycling, list of specified hazardous wastes, trade secrets, Section 25175, Health and Safety Code.

Hazardous waste recycling, trade secrets, confidential nature, Sections 25173 and 25180.5, Health and Safety Code.

Healing arts licensees, central files, confidentiality, Section 800, Business and Professions Code.

Health authorities, special county, confidentiality of records, Sections 14087.35, 14087.36, and 14087.38, Welfare and Institutions Code.

Health care provider disciplinary proceeding, confidentiality of documents, Section 805.1, Business and Professions Code.

Health care service plans, review of quality of care, privileged communications, Sections 1370 and 1380, Health and Safety Code.

Health commissions, special county, confidentiality of peer review proceedings, rates of payment, and trade secrets, Section 14087.31, Welfare and Institutions Code.

Health facilities, patient's rights of confidentiality, subdivision (c) of Section 128745 and Sections 128735, 128736, 128737, 128755, and 128765, Health and Safety Code.

Health personnel, data collection by the Office of Statewide Health Planning and Development, confidentiality of information on individual licentiates, Section 127780, Health and Safety Code.

Health plan governed by a county board of supervisors, exemption from disclosure for records relating to provider rates or payments for a three-year period after execution of the provider contract, Sections 6254.22 and 54956.87.

Hereditary Disorders Act, legislative finding and declaration, confidential information, Sections 124975 and 124980, Health and Safety Code.

Hereditary Disorders Act, rules, regulations, and standards, breach of confidentiality, Section 124980, Health and Safety Code.

HIV, disclosures to blood banks by department or county health officers, Section 1603.1, Health and Safety Code.

Home address of public employees and officers in Department of Motor Vehicles, records, confidentiality of, Sections 1808.2 and 1808.4, Vehicle Code.

Horse racing, horses, blood or urine test sample, confidentiality, Section 19577, Business and Professions Code.

Hospital district and municipal hospital records relating to contracts with insurers and service plans, subdivision (t), Section 6254.

Hospital final accreditation report, subdivision (s), Section 6254.

Housing authorities, confidentiality of rosters of tenants, Section 34283, Health and Safety Code.

Housing authorities, confidentiality of applications by prospective or current tenants, Section 34332, Health and Safety Code.

**Section 6276.26. “Improper governmental activities reporting” through  
“Investigative consumer reporting agency”**

Improper governmental activities reporting, confidentiality of identity of person providing information, Section 8547.5.

Improper governmental activities reporting, disclosure of information, Section 8547.6.

Industrial loan companies, confidentiality of financial information, Section 18496, Financial Code.

Industrial loan companies, confidentiality of investigation and examination reports, Section 18394, Financial Code.

Influenza vaccine, trade secret information and information relating to recipient of vaccine, Section 120155, Health and Safety Code.

In forma pauperis litigant, rules governing confidentiality of financial information, Section 68511.3.

Infrastructure information, exemption from disclosure for information voluntarily submitted to the Office of Emergency Services, subdivision (ab), Section 6254.

In-Home Supportive Services Program, exemption from disclosure for information regarding persons paid by the state to provide in-home supportive services, Section 6253.2.

Initiative, referendum, recall, and other petitions, confidentiality of names of signers, Section 6253.5.

Insurance claims analysis, confidentiality of information, Section 1875.16, Insurance Code.

Insurance Commissioner, confidential information, Sections 735.5, 1067.11, 1077.3, and 12919, Insurance Code.

Insurance Commissioner, informal conciliation of complaints, confidential communications, Section 1858.02, Insurance Code.

Insurance Commissioner, information from examination or investigation, confidentiality of, Sections 1215.7, 1433, and 1759.3, Insurance Code.

Insurance Commissioner, writings filed with nondisclosure, Section 855, Insurance Code.

Insurance fraud reporting, information acquired not part of public record, Section 1873.1, Insurance Code.

Insurance licensee, confidential information, Section 1666.5, Insurance Code.

Insurer application information, confidentiality of, Section 925.3, Insurance Code.

Insurer financial analysis ratios and examination synopses, confidentiality of, Section 933, Insurance Code.

Department of Resources Recycling and Recovery information, prohibition against disclosure, Section 45982, Revenue and Taxation Code.

International wills, confidentiality of registration information filed with the Secretary of State, Section 6389, Probate Code.

Intervention in regulatory and ratemaking proceedings, audit of customer seeking and award, Section 1804, Public Utilities Code.

Investigation and security records, exemption from disclosure for records of the Attorney General, the Department of Justice, the Office of Emergency Services, and state and local police agencies, subdivision (f), Section 6254.

Investigative consumer reporting agency, limitations on furnishing an investigative consumer report, Section 1786.12, Civil Code.

**Section 6276.28. “Joint Legislative Ethics Committee” through “Los Angeles County Tourism Marketing Commission”**

Joint Legislative Ethics Committee, confidentiality of reports and records, Section 8953.

Judicial candidates, confidentiality of communications concerning, Section 12011.5.

Judicial proceedings, confidentiality of employer records of employee absences, Section 230.2, Labor Code.

Jurors' lists, lists of registered voters and licensed drivers as source for, Section 197, Code of Civil Procedure.

Juvenile court proceedings to adjudge a person a dependent child of court, sealing records of, Section 389, Welfare and Institutions Code.

Juvenile criminal records, dissemination to schools, Section 828.1, Welfare and Institutions Code.

Juvenile delinquents, notification of chief of police or sheriff of escape of minor from secure detention facility, Section 1155, Welfare and Institutions Code.

Labor dispute, investigation and mediation records, confidentiality of, Section 65, Labor Code.

Lanterman-Petris-Short Act, mental health services recipients, confidentiality of information and records, mental health advocate, Sections 5540, 5541, 5542, and 5550, Welfare and Institutions Code.

Law enforcement vehicles, registration disclosure, Section 5003, Vehicle Code.

Legislative Counsel records, subdivision (m), Section 6254.

Library circulation records and other materials, subdivision (i), Section 6254 and Section 6267.

Life and disability insurers, actuarial information, confidentiality of, Section 10489.15, Insurance Code.

Litigation, confidentiality of settlement information, Section 68513.

Local agency legislative body, closed sessions, disclosure of materials, Section 54956.9.

Local government employees, confidentiality of records and claims relating to group insurance, Section 53202.25.

Local summary criminal history information, confidentiality of, Sections 13300 and 13305, Penal Code.

Local agency legislative body, closed session, nondisclosure of minute book, Section 54957.2.

Local agency legislative body, meeting, disclosure of agenda, Section 54957.5.

Long-term health facilities, confidentiality of complaints against, Section 1419, Health and Safety Code.

Long-term health facilities, confidentiality of records retained by State Department of Public Health, Section 1439, Health and Safety Code.

Los Angeles County Tourism Marketing Commission, confidentiality of information obtained from businesses to determine their assessment, Section 13995.108.

**Section 6276.30. “Managed care health plans” through “Multijurisdictional drug law enforcement agency”**

Managed care health plans, confidentiality of proprietary information, Section 14091.3 of the Welfare and Institutions Code.

Managed Risk Medical Insurance Board, negotiations with entities contracting or seeking to contract with the board, subdivisions (v) and (y) of Section 6254.

Mandated blood testing and confidentiality to protect public health, prohibition against compelling identification of test subjects, Section 120975 of the Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, unauthorized disclosures of identification of test subjects, Sections 1603.1, 1603.3, and 121022 of the Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, disclosure to patient's spouse, sexual partner, needle sharer, or county health officer, Section 121015 of the Health and Safety Code.

Manufactured home, mobilehome, floating home, confidentiality of home address of registered owner, Section 18081 of the Health and Safety Code.

Marital confidential communications, Sections 980, 981, 982, 983, 984, 985, 986, and 987 of the Evidence Code.

Market reports, confidential, subdivision (e) of Section 6254.

Marketing of commodities, confidentiality of financial information, Section 58781 of the Food and Agricultural Code.

Marketing orders, confidentiality of processors' or distributors' information, Section 59202 of the Food and Agricultural Code.

Marriage, confidential, certificate, Section 511 of the Family Code.

Medi-Cal Benefits Program, confidentiality of information, Section 14100.2 of the Welfare and Institutions Code.

Medi-Cal Benefits Program, Request of Department for Records of Information, Section 14124.89 of the Welfare and Institutions Code.

Medi-Cal Fraud Bureau, confidentiality of complaints, Section 12528.

Medi-Cal managed care program, exemption from disclosure for financial and utilization data submitted by Medi-Cal managed care health plans to establish rates, Section 14301.1 of the Welfare and Institutions Code.

Medi-Cal program, exemption from disclosure for best price contracts between the State Department of Health Care Services and drug manufacturers, Section 14105.33 of the Welfare and Institutions Code.

Medical information, disclosure by provider unless prohibited by patient in writing, Section 56.16 of the Civil Code.

Medical information, types of information not subject to patient prohibition of disclosure, Section 56.30 of the Civil Code.

Medical and other hospital committees and peer review bodies, confidentiality of records, Section 1157 of the Evidence Code.

Medical or dental licensee, action for revocation or suspension due to illness, report, confidentiality of, Section 828 of the Business and Professions Code.

Medical or dental licensee, disciplinary action, denial or termination of staff privileges, report, confidentiality of, Sections 805, 805.1, and 805.5 of the Business and Professions Code.

Meetings of state agencies, disclosure of agenda, Section 11125.1.

Mentally abnormal sex offender committed to state hospital, confidentiality of records, Section 4135 of the Welfare and Institutions Code.

Mentally disordered and developmentally disabled offenders, access to criminal histories of, Section 1620 of the Penal Code.

Mentally disordered persons, court-ordered evaluation, confidentiality of reports, Section 5202 of the Welfare and Institutions Code.

Mentally disordered or mentally ill person, confidentiality of written consent to detainment, Section 5326.4 of the Welfare and Institutions Code.

Mentally disordered or mentally ill person, voluntarily or involuntarily detained and receiving services, confidentiality of records and information, Sections 5328, 5328.15, 5328.2, 5328.4, 5328.8, and 5328.9 of the Welfare and Institutions Code.

Mentally disordered or mentally ill person, weapons restrictions, confidentiality of information about, Section 8103 of the Welfare and Institutions Code.

Milk marketing, confidentiality of records, Section 61443 of the Food and Agricultural Code.

Milk product certification, confidentiality of, Section 62121 of the Food and Agricultural Code.

Milk, market milk, confidential records and reports, Section 62243 of the Food and Agricultural Code.

Milk product registration, confidentiality of information, Section 38946 of the Food and Agricultural Code.

Milk equalization pool plan, confidentiality of producers' voting, Section 62716 of the Food and Agricultural Code.

Mining report, confidentiality of report containing information relating to mineral production, reserves, or rate of depletion of mining operation, Section 2207 of the Public Resources Code.

Minor, criminal proceeding testimony closed to public, Section 859.1 of the Penal Code.

Minors, material depicting sexual conduct, records of suppliers to be kept and made available to law enforcement, Section 1309.5 of the Labor Code.

Misdemeanor and felony reports by police chiefs and sheriffs to Department of Justice, confidentiality of, Sections 11107 and 11107.5 of the Penal Code.

Monetary instrument transaction records, confidentiality of, Section 14167 of the Penal Code.

Missing persons' information, disclosure of, Sections 14204 and 14205 of the Penal Code.

Morbidity and mortality studies, confidentiality of records, Section 100330 of the Health and Safety Code.

Motor vehicle accident reports, disclosure, Sections 16005, 20012, and 20014 of the Vehicle Code.

Motor vehicles, department of, public records, exceptions, Sections 1808 to 1808.7, inclusive, of the Vehicle Code.

Motor vehicle insurance fraud reporting, confidentiality of information acquired, Section 1874.3 of the Insurance Code.

Motor vehicle liability insurer, data reported to Department of Insurance, confidentiality of, Section 11628 of the Insurance Code.

Multijurisdictional drug law enforcement agency, closed sessions to discuss criminal investigation, Section 54957.8.

**Section 6276.32. “Narcotic addict outpatient revocation proceeding” through “Osteopathic physician and surgeon”**

Narcotic addict outpatient revocation proceeding, confidentiality of reports, Section 3152.5, Welfare and Institutions Code.

Narcotic and drug abuse patients, confidentiality of records, Section 11845.5, Health and Safety Code.

Native American graves, cemeteries and sacred places, records of, subdivision (r), Section 6254.

Notary public, confidentiality of application for appointment and commission, Section 8201.5.

Nurse, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 2770.12, Business and Professions Code.

Obscene matter, defense of scientific or other purpose, confidentiality of recipients, Section 311.8, Penal Code.

Occupational safety and health investigations, confidentiality of complaints and complainants, Section 6309, Labor Code.

Occupational safety and health investigations, confidentiality of trade secrets, Section 6322, Labor Code.

Official information acquired in confidence by public employee, disclosure of, Sections 1040 and 1041, Evidence Code.

Oil and gas, confidentiality of proposals for the drilling of a well, Section 3724.4, Public Resources Code.

Oil and gas, disclosure of onshore and offshore exploratory well records, Section 3234, Public Resources Code.

Oil and gas, disclosure of well records, Section 3752, Public Resources Code.

Oil and gas leases, surveys for permits, confidentiality of information, Section 6826, Public Resources Code.

Oil spill feepayer information, prohibition against disclosure, Section 46751, Revenue and Taxation Code.

Older adults receiving county services, providing information between county agencies, confidentiality of, Section 9401, Welfare and Institutions Code.

Organic food certification organization records, release of, Section 110845, Health and Safety Code.

Osteopathic physician and surgeon, rehabilitation and diversion records, confidentiality of, Section 2369, Business and Professions Code.

**Section 6276.34. “Parole revocation proceedings” through “Postmortem or autopsy photos”**

Parole revocation proceedings, confidentiality of information in reports, Section 3063.5, Penal Code.

Passenger fishing boat licenses, records, Section 7923, Fish and Game Code.

Paternity, acknowledgement, confidentiality of records, Section 102760, Health and Safety Code.

Patient-physician confidential communication, Sections 992 and 994, Evidence Code.

Patient records, confidentiality of, Section 123135, Health and Safety Code.

Payment instrument licensee records, inspection of, Section 33206, Financial Code.

Payroll records, confidentiality of, Section 1776, Labor Code.

Peace officer personnel records, confidentiality of, Sections 832.7 and 832.8, Penal Code.

Penitential communication between penitent and clergy, Sections 1032 and 1033, Evidence Code.

Personal Care Services Program, exemption from disclosure for information regarding persons paid by the state to provide personal care services, Section 6253.2.

Personal Income Tax, disclosure of information, Article 2 (commencing with Section 19542), Chapter 7, Part 10.2, Division 2, Revenue and Taxation Code.

Personal information, Information Practices Act, prohibitions against disclosure by state agencies, Sections 1798.24 and 1798.75, Civil Code.

Personal information, subpoena of records containing, Section 1985.4, Code of Civil Procedure.

Personal representative, confidentiality of personal representative's birth date and driver's license number, Section 8404, Probate Code.

Personnel Administration, Department of, confidentiality of pay data furnished to, Section 19826.5.

Persons formerly classified as mentally abnormal sex offenders committed to a state hospital, confidentiality of records, Section 4135, Welfare and Institutions Code.

Persons with mental health disorders, court-ordered evaluation, confidentiality of reports, Section 5202, Welfare and Institutions Code.

Persons with mental health disorders, confidentiality of written consent to detainment, Section 5326.4, Welfare and Institutions Code.

Persons with mental health disorders voluntarily detained and receiving services, confidentiality of records and information, Sections 5328, 5328.15, 5328.2, 5328.4, 5328.8 and 5328.9, Welfare and Institutions Code.

Persons with mental health disorders, weapons restrictions, confidentiality of information about, Section 8103, Welfare and Institutions Code.

Petition signatures, Section 18650, Elections Code.

Petroleum supply and pricing, confidential information, Sections 25364 and 25366, Public Resources Code.

Pharmacist, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 4372, Business and Professions Code.

Physical therapist or assistant, records of dangerous drug or alcohol diversion and rehabilitation, confidentiality of, Section 2667, Business and Professions Code.

Physical or mental condition or conviction of controlled substance offense, records in Department of Motor Vehicles, confidentiality of, Section 1808.5, Vehicle Code.

Physician and surgeon, rehabilitation and diversion records, confidentiality of, Section 2355, Business and Professions Code.

Physician assistant, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 3534.7, Business and Professions Code.

Physician competency examination, confidentiality of reports, Section 2294, Business and Professions Code.

Physicians and surgeons, confidentiality of reports of patients with a lapse of consciousness disorder, Section 103900, Health and Safety Code.

Physician Services Account, confidentiality of patient names in claims, Section 16956, Welfare and Institutions Code.

Pilots, confidentiality of personal information, Section 1157.1, Harbors and Navigation Code.

Pollution Control Financing Authority, financial data submitted to, subdivision (o), Section 6254.

Postmortem or autopsy photos, Section 129, Code of Civil Procedure.

**Section 6276.36. “Pregnancy tests by local public health agencies” through “Pupil records”**

Pregnancy tests by local public health agencies, confidentiality of, Section 123380, Health and Safety Code.

Pregnant women, confidentiality of blood tests, Section 125105, Health and Safety Code.

Prehospital emergency medical care, release of information, Sections 1797.188 and 1797.189, Health and Safety Code.

Prenatal syphilis tests, confidentiality of, Section 120705, Health and Safety Code.

Prescription drug discounts, confidentiality of corporate proprietary information, Section 130506, Health and Safety Code.

Prisoners, behavioral research on, confidential personal information, Section 3515, Penal Code.

Prisoners, confidentiality of blood tests, Section 7530, Penal Code.

Prisoners, medical testing, confidentiality of records, Sections 7517 and 7540, Penal Code.

Prisoners, transfer from county facility for mental treatment and evaluation, confidentiality of written reasons, Section 4011.6, Penal Code.

Private industry wage data collected by public entity, confidentiality of, Section 6254.6.

Private railroad car tax, confidentiality of information, Section 11655, Revenue and Taxation Code.

Probate referee, disclosure of materials, Section 8908, Probate Code.

Probation officer reports, inspection of, Section 1203.05, Penal Code.

Produce dealer, confidentiality of financial statements, Section 56254, Food and Agricultural Code.

Products liability insurers, transmission of information, Section 1857.9, Insurance Code.

Professional corporations, financial statements, confidentiality of, Section 13406, Corporations Code.

Property on loan to museum, notice of intent to preserve an interest in, not subject to disclosure, Section 1899.5, Civil Code.

Property taxation, confidentiality of change of ownership, Section 481, Revenue and Taxation Code.

Property taxation, confidentiality of exemption claims, Sections 63.1, 69.5, and 408.2, Revenue and Taxation Code.

Property taxation, confidentiality of property information, Section 15641, Government Code and Section 833, Revenue and Taxation Code.

Proprietary information, availability only to the director and other persons authorized by the operator and the owner, Section 2778, Public Resources Code.

Psychologist and client, confidential relations and communications, Section 2918, Business and Professions Code.

Psychotherapist-patient confidential communication, Sections 1012 and 1014, Evidence Code.

Public employees' home addresses and telephone numbers, confidentiality of, Section 6254.3.

Public Employees' Medical and Hospital Care Act, confidentiality of data relating to health care services rendered by participating hospitals to members and annuitants, Section 22854.5.

Public Employees' Retirement System, confidentiality of data filed by member or beneficiary with board of administration, Section 20134.

Public investment funds, exemption from disclosure for records regarding alternative investments, Section 6254.26.

Public school employees organization, confidentiality of proof of majority support submitted to Public Employment Relations Board, Sections 3544, 3544.1, and 3544.5.

Public social services, confidentiality of digest of decisions, Section 10964, Welfare and Institutions Code.

Public social services, confidentiality of information regarding child abuse or elder or dependent persons abuse, Section 10850.1, Welfare and Institutions Code.

Public social services, confidentiality of information regarding eligibility, Section 10850.2, Welfare and Institutions Code.

Public social services, confidentiality of records, Section 10850, Welfare and Institutions Code.

Public social services, disclosure of information to law enforcement agencies, Section 10850.3, Welfare and Institutions Code.

Public social services, disclosure of information to law enforcement agencies regarding deceased applicant or recipient, Section 10850.7, Welfare and Institutions Code.

Public utilities, confidentiality of information, Section 583, Public Utilities Code.

Pupil, confidentiality of personal information, Section 45345, Education Code.

Pupil drug and alcohol use questionnaires, confidentiality of, Section 11605, Health and Safety Code.

Pupil, expulsion hearing, disclosure of testimony of witness and closed session of district board, Section 48918, Education Code.

Pupil, personal information disclosed to school counselor, confidentiality of, Section 49602, Education Code.

Pupil record contents, records of administrative hearing to change contents, confidentiality of, Section 49070, Education Code.

Pupil records, access authorized for specified parties, Section 49076, Education Code.

Pupil records, disclosure in hearing to dismiss or suspend school employee, Section 44944.1, Education Code.

Pupil records, release of directory information to private entities, Sections 49073 and 49073.5, Education Code.

**Section 6276.38. “Radioactive materials” through “Safe surrender site”**

Radioactive materials, dissemination of information about transportation of, Section 33002, Vehicle Code.

Railroad infrastructure protection program, disclosure not required for risk assessments filed with the Public Utilities Commission, the Director of Emergency Services, or the Office of Emergency Services, Section 6254.23.

Real estate broker, annual report to Bureau of Real Estate of financial information, confidentiality of, Section 10232.2, Business and Professions Code.

Real property, acquisition by state or local government, information relating to feasibility, subdivision (h), Section 6254.

Real property, change in ownership statement, confidentiality of, Section 27280.

Records described in Section 1620 of the Penal Code.

Records of contract purchasers, inspection by public prohibited, Section 85, Military and Veterans Code.

Records of persons committed to a state hospital pursuant to Section 4135 of the Welfare and Institutions Code.

Registered public obligations, inspection of records of security interests in, Section 5060.

Registration of exempt vehicles, nondisclosure of name of person involved in alleged violation, Section 5003, Vehicle Code.

Rehabilitation, Department of, confidential information, Section 19016, Welfare and Institutions Code.

Reinsurance intermediary-broker license information, confidentiality of, Section 1781.3, Insurance Code.

Relocation assistance, confidential records submitted to a public entity by a business or farm operation, Section 7262.

Rent control ordinance, confidentiality of information concerning accommodations sought to be withdrawn from, Section 7060.4.

Report of probation officer, inspection, copies, Section 1203.05, Penal Code.

Repossession agency licensee application, confidentiality of information, Sections 7503, 7504, and 7506.5, Business and Professions Code.

Reproductive health facilities, disclosure not required for personal information regarding employees, volunteers, board members, owners, partners, officers, and contractors of a reproductive health services facility who have provided requisite notification, Section 6254.18.

Residence address in any record of Department of Housing and Community Development, confidentiality of, Section 6254.1.

Residence address in any record of Department of Motor Vehicles, confidentiality of, Section 6254.1, Government Code, and Section 1808.21, Vehicle Code.

Residence and mailing addresses in records of Department of Motor Vehicles, confidentiality of, Section 1810.7, Vehicle Code.

Residential care facilities, confidentiality of resident information, Section 1568.08, Health and Safety Code.

Residential care facilities for the elderly, confidentiality of client information, Section 1569.315, Health and Safety Code.

Respiratory care practitioner, professional competency examination reports, confidentiality of, Section 3756, Business and Professions Code.

Respiratory care practitioner, professional competency examination reports, confidentiality of, Section 3756, Business and Professions Code.

Restraint of trade, civil action by district attorney, confidential memorandum, Section 16750, Business and Professions Code.

Reward by Governor for information leading to arrest and conviction, confidentiality of person supplying information, Section 1547, Penal Code.

Safe surrender site, confidentiality of information pertaining to a parent or individual surrendering a child, Section 1255.7, Health and Safety Code.

**Section 6276.40. “Sales and use tax” through “Social security numbers within records of local agencies”**

Sales and use tax, disclosure of information, Section 7056, Revenue and Taxation Code.

Santa Barbara Regional Health Authority, exemption from disclosure for records maintained by the authority regarding negotiated rates for the California Medical Assistance Program, Section 14499.6, Welfare and Institutions Code.

Savings association employees, disclosure of criminal history information, Section 6525, Financial Code.

Savings associations, inspection of records by shareholders, Section 6050, Financial Code.

School district governing board, disciplinary action, disclosure of pupil information, Section 35146, Education Code.

School employee, merit system examination records, confidentiality of, Section 45274, Education Code.

School employee, notice and reasons for hearing on nonreemployment of employee, confidentiality of, Sections 44948.5 and 44949, Education Code.

School meals for needy pupils, confidentiality of records, Section 49558, Education Code.

Sealed records, arrest for misdemeanor, Section 851.7, Penal Code.

Sealed records, misdemeanor convictions, Section 1203.45, Penal Code.

Sealing and destruction of arrest records, determination of innocence, Section 851.8, Penal Code.

Search warrants, special master, Section 1524, Penal Code.

Sex change, confidentiality of birth certificate, Section 103440, Health and Safety Code.

Sex offenders, registration form, Section 290.021, Penal Code.

Sexual assault forms, confidentiality of, Section 13823.5, Penal Code.

Sexual assault counselor and victim, confidential communication, Sections 1035.2, 1035.4, and 1035.8, Evidence Code.

Shorthand reporter's complaint, Section 8010, Business and Professions Code.

Small family day care homes, identifying information, Section 1596.86, Health and Safety Code.

Social security number, applicant for driver's license or identification card, nondisclosure of, Section 1653.5, Vehicle Code, and Section 6254.29.

Social security number, official record or official filing, nondisclosure of, Section 9526.5, Commercial Code, and Sections 6254.27 and 6254.28.

Social Security Number Truncation Program, Article 3.5 (commencing with Section 27300), Chapter 6, Part 3, Division 2, Title 3.

Social security numbers within records of local agencies, nondisclosure of, Section 6254.29.

**Section 6276.42. "State agency activities" through "Sturgeon egg processors"**

State agency activities relating to unrepresented employees, subdivision (p) of Section 6254.

State agency activities relating to providers of health care, subdivision (a) of Section 6254.

State Auditor, access to barred records, Section 8545.2.

State Auditor, confidentiality of records, Sections 8545, 8545.1, and 8545.3.

State civil service employee, confidentiality of appeal to state personnel board, Section 18952.

State civil service employees, confidentiality of reports, Section 18573.

State civil service examination, confidentiality of application and examination materials, Section 18934.

State Compensation Insurance Fund, exemption from disclosure for various records maintained by the State Compensation Insurance Fund, subdivision (ad), Section 6254.

State Contract Act, bids, questionnaires and financial statements, Section 10165, Public Contract Code.

State Contract Act, bids, sealing, opening and reading bids, Section 10304, Public Contract Code.

State Energy Resources Conservation and Development Commission, confidentiality of proprietary information submitted to, Section 25223, Public Resources Code.

State hospital patients, information and records in possession of Superintendent of Public Instruction, confidentiality of, Section 56863, Education Code.

State Long-Term Care Ombudsman, access to government agency records, Section 9723, Welfare and Institutions Code.

State Long-Term Care Ombudsman office, confidentiality of records and files, Section 9725, Welfare and Institutions Code.

State Long-Term Care Ombudsman office, disclosure of information or communications, Section 9715, Welfare and Institutions Code.

State Lottery Evaluation Report, disclosure, Section 8880.46.

State prisoners, exemption from disclosure for surveys by the California Research Bureau of children of female prisoners, Section 7443, Penal Code.

State summary criminal history information, confidentiality of information, Sections 11105, 11105.1, 11105.3, and 11105.4, Penal Code.

State Teachers' Retirement System, confidentiality of information filed with the system by a member, participant, or beneficiary, Sections 22306 and 26215, Education Code.

Sterilization of disabled, confidentiality of evaluation report, Section 1955, Probate Code.

Strawberry marketing information, confidentiality of, Section 63124, Food and Agricultural Code.

Structural pest control licensee records relating to pesticide use, confidentiality of, Section 15205, Food and Agricultural Code.

Student driver, records of physical or mental condition, confidentiality of, Section 12661, Vehicle Code.

Student, community college, information received by school counselor, confidentiality of, Section 72621, Education Code.

Student, community college, records, limitations on release, Section 76243, Education Code.

Student, community college, record contents, records of administrative hearing to change contents, confidentiality of, Section 76232, Education Code.

Student, sexual assault on private higher education institution campus, confidentiality of information, Section 94385, Education Code.

Student, sexual assault on public college or university, confidentiality of information, Section 67385, Education Code.

Sturgeon egg processors, records, Section 10004, Fish and Game Code.

**Section 6276.44. “Taxpayer information” through “Trust companies”**

Taxpayer information, confidentiality, local taxes, subdivision (i), Section 6254.

Tax preparer, disclosure of information obtained in business of preparing tax returns, Section 17530.5, Business and Professions Code.

Teacher, credential holder or applicant, information provided to Commission on Teacher Credentialing, confidentiality of, Section 44341, Education Code.

Teacher, certified school personnel examination results, confidentiality of, Section 44289, Education Code.

Telephone answering service customer list, trade secret, Section 16606, Business and Professions Code.

Timber yield tax, disclosure to county assessor, Section 38706, Revenue and Taxation Code.

Timber yield tax, disclosure of information, Section 38705, Revenue and Taxation Code.

Title insurers, confidentiality of notice of noncompliance, Section 12414.14, Insurance Code.

Tobacco products, exemption from disclosure for distribution information provided to the State Department of Public Health, Section 22954, Business and Professions Code.

Tow truck driver, information in records of California Highway Patrol, Department of Motor Vehicles, or other agencies, confidentiality of, Sections 2431 and 2432.3, Vehicle Code.

Toxic substances, Department of, inspection of records of, Section 25152.5, Health and Safety Code.

Trade secrets, Section 1060, Evidence Code.

Trade secrets, confidentiality of, occupational safety and health inspections, Section 6322, Labor Code.

Trade secrets, disclosure of public records, Section 3426.7, Civil Code.

Trade secrets, food, drugs, cosmetics, nondisclosure, Sections 110165 and 110370, Health and Safety Code.

Trade secrets, protection by Director of the Department of Pesticide Regulation, Section 6254.2.

Trade secrets and proprietary information relating to pesticides, confidentiality of, Sections 14022 and 14023, Food and Agricultural Code.

Trade secrets, protection by Director of Industrial Relations, Section 6396, Labor Code.

Trade secrets relating to hazardous substances, disclosure of, Sections 25358.2 and 25358.7, Health and Safety Code.

Traffic violator school licensee records, confidentiality of, Section 11212, Vehicle Code.

Traffic offense, dismissed for participation in driving school or program, record of, confidentiality of, Section 1808.7, Vehicle Code.

Transit districts, questionnaire and financial statement information in bids, Section 99154, Public Utilities Code.

Tribal-state gaming contracts, exemption from disclosure for records of an Indian tribe relating to securitization of annual payments, Section 63048.63.

Trust companies, disclosure of private trust confidential information, Section 1582, Financial Code.

**Section 6276.46. “Unclaimed property” through “Wards and dependent children, inspection of juvenile court documents”**

Unclaimed property, Controller records of, disclosure, Section 1582, Code of Civil Procedure.

Unemployment compensation, disclosure of confidential information, Section 2111, Unemployment Insurance Code.

Unemployment compensation, information obtained in administration of code, Section 1094, Unemployment Insurance Code.

Unemployment fund contributions, publication of annual tax paid, Section 989, Unemployment Insurance Code.

University of California, exemption from disclosure for information submitted by bidders for award of best value contracts, Section 10506.6, Public Contract Code.

Unsafe working condition, confidentiality of complainant, Section 6309, Labor Code.

Use fuel tax information, disclosure prohibited, Section 9255, Revenue and Taxation Code.

Utility systems development, confidential information, subdivision (e), Section 6254.

Utility user tax return and payment records, exemption from disclosure, Section 7284.6, Revenue and Taxation Code.

Vehicle registration, confidentiality of information, Section 4750.4, Vehicle Code.

Vehicle accident reports, disclosure of, Sections 16005, 20012, and 20014, Vehicle Code and Section 27177, Streets and Highways Code.

Vehicular offense, record of, confidentiality five years after conviction, Section 1807.5, Vehicle Code.

Veterans Affairs, Department of, confidentiality of records of contract purchasers, Section 85, Military and Veterans Code.

Veterinarian or animal health technician, alcohol or dangerous drugs diversion and rehabilitation records, confidentiality of, Section 4871, Business and Professions Code.

Victims' Legal Resource Center, confidentiality of information and records retained, Section 13897.2, Penal Code.

Voter, affidavit or registration, confidentiality of information contained in, Section 6254.4.

Voter, registration by confidential affidavit, Section 2194, Elections Code.

Voting, secrecy, Section 1050, Evidence Code.

Wards and dependent children, inspection of juvenile court documents, Section 827, Welfare and Institutions Code.

#### **Section 6276.48. "Wards" through "Youth Authority"**

Wards, petition for sealing records, Section 781, Welfare and Institutions Code.

Winegrowers of California Commission, confidentiality of producers' or vintners' proprietary information, Sections 74655 and 74955, Food and Agricultural Code.

Workers' Compensation Appeals Board, injury or illness report, confidentiality of, Section 6412, Labor Code.

Workers' compensation insurance, dividend payment to policyholder, confidentiality of information, Section 11739, Insurance Code.

Workers' compensation insurance fraud reporting, confidentiality of information, Section 1877.4, Insurance Code.

Workers' compensation insurer or rating organization, confidentiality of notice of noncompliance, Section 11754, Insurance Code.

Workers' compensation insurer, rating information, confidentiality of, Section 11752.7, Insurance Code.

Workers' compensation, notice to correct noncompliance, Section 11754, Insurance Code.

Workers' compensation, release of information to other governmental agencies, Section 11752.5, Insurance Code.

Workers' compensation, self-insured employers, confidentiality of financial information, Section 3742, Labor Code.

Workplace inspection photographs, confidentiality of, Section 6314, Labor Code.

Youth Authority, parole revocation proceedings, confidentiality of, Section 1767.6, Welfare and Institutions Code.

Youth Authority, release of information in possession of Youth Authority for offenses under Sections 676, 1764.1, and 1764.2, Welfare and Institutions Code.

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